TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 11.

SEABOARD AIR LINE RAILWAY, PLAINTIFF IN ERROR,

vs.

THE STATE OF FLORIDA UPON THE RELATION OF W. H. ELLIS, AS ATTORNEY GENERAL OF SAID STATE, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED JANUARY 6, 1905.

(19,592)

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IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

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1-10 STATE OF FLORIDA:

In the Supreme Court.

Be it remembered that heretofore, to-wit: on the 7th day of March, 1904, the same being a day within the January term, 1904, of the supreme court of the State of Florida, The State of Florida *ex rel.* W. H. Ellis as attorney-general of said State, and J. M. Barrs as special counsel for the railroad commissioners of the State of Florida, by its attorneys filed in the office of the clerk of the supreme court of the State of Florida its petition for an alternative writ of mandamus, which said petition is in the words and figures following, to-wit:

* * * * * * *

11 And afterwards, on the 8th day of March, A. D. 1904, comes the plaintiff, by its attorneys, and files the following motion for an alternative writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,

vs.

THE SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina.

Comes now the relators and present to the court a petition, and move the court that an alternative writ of mandamus do issue as prayed in said petition, returnable as the court may direct.

RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA,
W. H. ELLIS, Attorney General,
J. M. BARRS, Special Counsel,
By W. H. ELLIS, Attorney General.

And on the same day the supreme court made an order that an alternative writ of mandamus issue herein directed to the respondent, returnable on Tuesday, the 19th instant, which order is in the words and figures following, to-wit:

12 In Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Relators,
vs.
SEABOARD AIR LINE RY., Defendant.

Upon consideration of the motion and petition herein, it is ordered that an alternative writ of mandamus do issue herein directed to the respondent, returnable on Tuesday, the 19th instant, in conformity to the said motion and petition filed.

And afterwards, to-wit: on the 10th day of March, A. D. 1904, an alternative writ of mandamus was issued herein in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,
vs.
THE SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina. (#2.)

13 The State of Florida to the Seaboard Air Line Railway:

Whereas, by a petition caused by Jefferson B. Browne, John L. Morgan and R. Hudson Burr as the railroad commissioners of the State of Florida to be filed in this court, in the name of The State of Florida, by W. H. Ellis as attorney general of the State of Florida, and J. M. Barrs as special counsel for the railroad commissioners of the State of Florida, it has been made to appear:

1. That the Seaboard Air Line railway, a railroad company, is a corporation organized under the laws of the States of Virginia and North Carolina, and now controls and operates, and since the 8th day of October, A. D. 1903, has controlled and operated divers lines of railroads, which are wholly or in part in the State of Florida; and that the said Seaboard Air Line railway is now, and since the 8th day of October, A. D. 1903, has been a common carrier engaged in the transportation of freight and passengers for hire over its said lines of railroads from points in Florida to points in Florida.

2. That, on the 8th day of October, A. D. 1903, the railroad commissioners of the State of Florida, in session at their office in Tallahassee, Florida, by an order duly adopted by them, gave notice in accordance with the laws of Florida to all the railroad companies

and common carriers doing business wholly or in part within the State of Florida, that there would be a meeting of said railroad commissioners, at their office in the city of Tallahassee, Florida, on the 16th day of November, 1903, at 9:00 o'clock a. m., when they proposed to adopt a freight rate of one cent per ton per mile on phosphate from points within the State of Florida to points within the State of Florida, except to such points where the proposed rates would raise the rate then in force, and that to such points the
14 rates then in force should remain the same, at which time the railroad companies and common carriers doing business wholly or in part within the State of Florida, would have an opportunity to be heard, and to show cause, if any they had, why the proposed rates should not be adopted.

3. That thereafter the said railroad commissioners changed the place of meeting from Tallahassee, Florida, to Jacksonville, Florida, of which change all the railroad companies and common carriers doing business wholly or in part within the State of Florida were duly notified.

4. That, in accordance with said notice, the said railroad commissioners met at the board of trade rooms in the city of Jacksonville, Florida, on the 16th day of November, 1903, at which time and place the said railroads and common carriers were given an opportunity to be heard, and answers were then and there filed by the Atlantic Coast Line railroad, the Seaboard Air Line railway and the Jacksonville and Southwestern railway, and request was made by them that they, and each of them, be given until November 28th, 1903, in which to file their briefs and supplemental briefs, which request was granted, and the briefs of each of said railroad companies having been received by the said commissioners, and having been duly considered by them in connection with the proposed reduction in phosphate rates, and the said commissioners, on the 17th day of December, A. D. 1903, in session at their office at Tallahassee, Florida, being satisfied that some of the then present freight rates on phosphate from points in Florida to points within the State of Florida were unreasonably high and should be reduced and based upon a mileage rate, ordered that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida for the transportation of phosphate from points in the State of Florida to points within said State, should not exceed one cent per ton per mile provided, however, that where the rate of one cent per ton per mile would raise any rate then in operation, the said rate of one cent per ton per mile should not be effective, but that the rate as then charged by the said railroad companies was then and there adopted in and by said order
15 of the said railroad commissioners as their rate between such points.

4*a*. That the said commissioners, in and by said order, then and there further ordered that where a shipment of phosphate should pass over two or more railroads in reaching its destination within

the State of Florida, the initial line might charge one and a half cents per ton per mile for the first ten miles which said phosphate should be hauled.

5. That the said railroad commissioners, in and by their said order, then and there further ordered that where a shipment of phosphate from points in Florida to points in Florida should pass over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19 governing joint rates were thereby modified so that the initial road should have the right to deliver shipments to the delivering road at such junctional point within the State of Florida as it should desire, provided, however, that the rate charged for such shipment should be based upon the shortest mileage between the point of shipment and point of destination.

6. That the said railroad commissioners, in and by their said order, then and there further ordered that the said rate therein prescribed, should be effective on and after the 15th day of January, A. D. 1904.

A duly certified copy of the said order and the said rule 19 are hereto attached marked "Exhibit A" and "Exhibit B," respectively, and made a part hereof to the same extent as if fully set out herein.

7. That the said railroad commissioners, prior to the 15th day of January, A. D. 1904, furnished all railroads doing business within said State with notice of the changes and revisions adopted in and by said order, which said notice stated the time when said changes and revisions should go into effect.

16 8. That, although the said Seaboard Air Line railway was furnished with notice of the changes and revisions of phosphate rates, as aforesaid, it has not obeyed said order and has not put into effect the schedule of rates prescribed in and by said order, but refuses so to do, and in violation and disregard of the rate prescribed in and by said order and contrary to the laws of Florida now charges, and since the 15th day of January, 1904, has charged for the transportation of phosphate over its said lines of railroads and railroads under its control or management from points in Florida to points in Florida rates in excess of the rates prescribed in and by said order, and the said Seaboard Air Line railway has refused and still refuses to otherwise comply with all and singular the aforesaid and other commands and directions of said order of the said railroad commissioners, made on the 17th day of December, A. D. 1903.

9. And it has been made to further appear that the said railroad commissioners, as aforesaid, constituting the railroad commission of the State of Florida, and the people of the State of Florida, are entirely without remedy in the premises, unless it be afforded by the interposition of this honorable court through a writ of mandamus.

Now, therefore, we, being willing that full and speedy justice should be done in the premises, do command you, the Seaboard Air Line railway, to forthwith put into operation and effect over all

your lines of railroads and all the railroads which are under your management or control, which are wholly or in part within the State of Florida, the rate prescribed in and by said order of the said railroad commissioners on the 17th day of December, A. D., 1903, to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida for the transportation of phosphate from points in the State of Florida to points within said State, and do command you to further comply with all the commands and directions of said order of the said railroad com-
17 missioners, as contained in a duly certified copy of said order which is hereto attached and marked "Exhibit A" and made a part hereof to the same extent as if fully set out herein, and that you continue to comply with all the commands and directions of said order as long as the same shall be in force; or that you appear before the justices of our supreme court sitting within and for the State of Florida, at the court room in the city of Tallahassee, on the 29th day of March, 1904, at ten o'clock a. m. of said day, and show cause why you refuse to do so, and have you then and there this writ.

Witness the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, and the seal of the said court, at Tallahassee, the capital, this 8th day of March, A. D. 1904.

[SEAL.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

EXHIBIT A.

Order No. 34.

Railroad Commission, State of Florida.

In the Matter of Freight Rate for the Transportation of Phosphate from Points in Florida to Points Within the State of Florida.

Due notice having been given to all the railroads doing business wholly or in part within the State of Florida, that there would be a meeting of the railroad commissioners in the city of Jacksonville on the 16th day of November, A. D. 1903, for the purpose of considering the adoption of a freight rate of one cent per ton per mile on phosphate shipped from points within the State of Florida to points within said State, except to such points where the proposed rate would raise the rate now in force to such points, at which time all railroad companies and common carriers would be given an opportunity to be heard and show cause, if any they had, why the proposed rates should not be adopted;

18 In accordance therewith the commissioners met at the board of trade rooms in the city of Jacksonville on said 16th day of November, and the railroads were given an opportunity to

be heard, and answers were filed by the Atlantic Coast Line R. R., Seaboard Air Line railway, and the Jacksonville & Southwestern Ry., and request made by them that they be given until Nov. 28th in which to file their briefs and supplemental briefs, which request was granted, and the briefs having been received by the commissioners, and duly considered by them in connection with the proposed reduction in the phosphate rate, and the commissioners being satisfied that some of the present freight rates on phosphate from points in the State of Florida to points within the State are unreasonably high, and should be reduced and based upon a mileage rate:

It is, therefore, ordered by the railroad commissioners of the State of Florida, that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile.

Provided, however, that where the rate of one cent per ton per mile will raise any rate now in operation, that said rate of one cent per ton per mile shall not be effective, but the rate as now charged by the railroad companies is hereby adopted by the railroad commissioners as their rate between such points.

It is further ordered, that where a shipment of phosphate shall pass over two or more railroads in reaching its destination within the State of Florida, the initial line may charge one and a half cents per ton per mile for the first ten miles which said phosphate shall be hauled.

It is further ordered, that where phosphate from points in Florida, passes over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19, governing joint rates is hereby modified, so that the initial road shall have
19 the right to deliver the shipment to the delivering road at such junctional point within the State of Florida as it may desire.

Provided, however, that the rate charged for such shipment shall be based upon the shortest mileage between the point of shipment and the place of destination.

It is further ordered that this rate shall be effective on and after January 15, 1904.

Done and ordered by the railroad commissioners of the State of Florida, in session, at their office in the city of Tallahassee, Florida, this 17th day of December, A. D. 1903.

(S'd) JEFFERSON B. BROWNE, Chairman.

Attest: R. C. DUNN, Secretary.

I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of the order adopted by the

railroad commissioners of the State of Florida on the 17th day of December, A. D. 1903, in the matter of freight rate for the transportation of phosphate from points in Florida to points within the State of Florida, as the same appears upon the record of the proceedings of said commissioners.

Witness my hand, this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad Commissioners
of the State of Florida.

20 EXHIBIT B.

Joint Rates Shall be Sum of Locals.

19. On all shipments of freight not governed by rule No. 1, originating and terminating in this State, which shall pass over the whole of two or more roads not under the same control, the maximum rates charged on such shipments shall not be greater than the sum of the local rates on such freights for the distance hauled over each road. The total rate thus ascertained on such freights from the point of shipment to the point of destination shall be divided in such proportions between the roads over which such freights pass so as to give to each road interested in the shipment its local rate for the distance such shipment is hauled, conditioned upon the initial line delivering the traffic to the delivering road at its nearest junctional point. Nothing in this rule shall be construed to prevent the total of any joint rate made under this rule from being divided in such proportions between the roads interested in the same as they may agree upon, but a failure to so agree between the roads interested shall in no way affect the total joint rate to be charged and collected on, or work delay in the transportation of such freight, or be subject of appeal to the commission by the roads at interest; provided, however, that no railroad company shall discriminate between any other two or more railroad comapnies when the conditions and circumstances are practically the same.

I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of rule 19, governing joint rates, as prescribed by the railroad commissioners of the State of Florida, and as the same appears upon the record of the proceedings of the said railroad commissioners.

Witness my hand this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad Commissioners
of the State of Florida.

21 This writ came to hand this March 10th, 1904, and in the absence of the president and vice president, or the head of the corporation, the Seaboard Air Line railway, and in the absence of

the cashier and treasurer and secretary and general manager and any director of said Seaboard Air Line railway, a corporation, this writ was served upon E. D. Raney, a business agent of the said Seaboard Air Line railway, a corporation, by delivering a copy of said writ to the said E. D. Raney, who is a resident of Leon county, on March 10th, 1904, in Leon county, Florida.

CHARLES HOPKINS,
Sheriff of the Supreme Court of Florida.

And afterwards, to-wit, on the 29th day of March, A. D. 1904, the defendant filed its demurrer to the alternative writ of mandamus, which demurrer is in the words and figures following, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1904.

STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-general of the State of Florida, etc.,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation, etc.

Now comes the defendant, Seaboard Air Line Railway, a corporation, and says that the alternative writ is bad in substance, and insufficient in law to be answered.

The substantial matters of law to be argued are as follows:

1. Such writ does not state or specify any instance or case of a shipment of phosphate falling within the provisions of the order of the 17th day of December, A. D. 1903, alleged by said alter-
22 native writ to have been made by the railroad commissioners of the State of Florida, in which this defendant has disobeyed said order of December 17th, 1903, or has made a charge in excess of the rate prescribed by said order for the transportation of phosphate over its line of railroad from points in Florida to points in Florida, rates in excess of the rates prescribed in and by said order of December 17th, 1903.

2. The said alternative writ does not state or specify any instance or case in which there has been a violation of the order of the railroad commission of the State of Florida, alleged to have been made on the 17th day of December, 1903, or set up any facts showing that there has been a violation of such order by this defendant, by charging a rate or rates in excess of the rates prescribed by said order of December 17th, 1903.

3. The alternative writ aforesaid fails to state or set forth facts showing that there has been a violation in any way by this defendant of said order of December 17th, 1903, alleged by said alternative writ to have been made by the railroad commission of the State of Florida.

4. The said alternative writ, in so far as it attempts to show any violation of the alleged order of December 17th, 1903, of the railroad

ommission of the State of Florida, is a mere statement of opinion nd conclusions as a matter of law of the State of Florida and re- ators of a violation by defendant of said order of December 17th, 903, alleged by said alternative writ to have been made by the ailroad commission of the State of Florida, and fails to set up any act or facts upon which this honorable court can form an opinion s to whether or not there has been a violation of such order of De- ember 17th, 1903, by this defendant in any case or cases, instance r instances of a shipment or shipments of phosphate from any one oint in Florida to another point in the State of Florida, falling within the provisions of said order.

3 5. The said writ fails to inform the defendant of the specific instance or instances in which the said order of December 7th, 1903, has been violated by this defendant by charging a higher ate than that prescribed by said order, upon shipments of phos- hate from a point in Florida to a point in Florida.

6. The said alternative writ is otherwise and in all respects in- afficient in law to be answered unto by this defendant.

GEO. P. RANEY,
Attorney for Defendant.

I hereby certify that I am attorney in the above cause for the bove named defendant, and that I believe the above demurrer to e well founded in law.

GEO. P. RANEY,
Division Counsel, Seaboard Air Line Railway for Florida.

STATE OF VIRGINIA, }
City of Portsmouth. }

Personally appeared J. M. Barr, and he being duly sworn, de- oses and says that he is president and general manager of The Seaboard Air Line Railway, the defendant above named, and that he above demurrer is not interposed for the purpose of delay.

J. M. BARR.

Sworn to and subscribed before me, this the 26th day of March, A. D. 1904.

Witness my hand and official seal.

[SEAL.] JNO. H. BOATWRIGHT,
Notary Public for City of Portsmouth, State of Virginia.

My term as notary public expires Feb. 19, 1908.

I hereby certify that this is a case in which, by the laws of Virginia, no tax is required upon the seal.

24 JNO. H. BOATWRIGHT,
Notary Public.

And afterwards, to-wit, on the 26th day of April, A. D. 1904, the supreme court made an order allowing an extension of time for filing briefs, which order is in the words and figures as follows, to-wit:

Supreme Court of Florida, January Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSION *et al.*, Plaintiff,
vs.
THE SEABOARD AIR LINE RAILWAY COMPANY, Defendant. } (No. 2.)

This cause is this day submitted to the court upon oral argument by counsel for the respective parties, on the demurrer of the defendant to the alternative writ of mandamus, but the court not being advised of its judgment in the premises, time is taken to consider thereof. Upon application of counsel for the defendant for an extension of time for filing briefs, it is ordered that counsel for both parties be allowed until next Tuesday, May 3rd, to file briefs.

And afterwards, to-wit: on the 28th day of June, A. D. 1904, the supreme court of Florida filed with the clerk of said court its opinion in this cause, which opinion is in the words and figures as follows, to-wit:

25 In the Supreme Court of Florida, Division A, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of the State of Florida, and J. M. Barrs, as Special Counsel of the Railroad Commissioners of the State of Florida, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant. } No. 1.

SAME PLAINTIFF
vs.
SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the State of Virginia and North Carolina, Defendant. } No. 2.

SAME PLAINTIFF
vs.
JACKSONVILLE & SOUTHWESTERN RAILROAD COMPANY, a Corporation, Defendant. } No. 3.

26 Statement.

The above mentioned three cases against three separate corporations are founded upon alternative writs and demurrers thereto, in

the same language and terms, and the opinion in the first case will be considered as applying to each of them.

Upon the petition of the relators an alternative writ of mandamus issued out of this court on March 7, 1904, alleging in substance:

1. The incorporation of the respondent and that since the eighth of October, A. D. 1903, it has controlled and operated as a common carrier divers lines of railroads wholly or in part within the State of Florida, and has been engaged in the transportion of freight and passengers over its lines, from points in Florida to points in Florida.

2. That the State railroad commissioners, pursuant to notice of their intention to adopt a freight rate of one cent per ton per mile on phosphate from points within Florida to points within Florida (except points where the proposed rate would raise the rates then in force, and that to such points the rates then in force should remain the same), met in the city of Jacksonville, on November 16, 1903, at which place and time the respondent and other railroads, pursuant to said notice, were given an opportunity to show cause, if any they had, why the proposed rate should not be adopted.

3. That at the said time and place, respondent and other railroads filed answers, and by their request, were given until November 28, 1903, to file their briefs and supplemental briefs, which briefs were filed and considered by the railroad commissioners, and afterwards, on December 17, 1903, the said commissioners, in session at Tallahassee, Florida, being satisfied that some of the then existing freight rates on phosphate from points in Florida to points within the said State, were unreasonably high, and should
27 be reduced and based upon a mileage rate, ordered that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida for the transportation of phosphate from points in Florida to points within said State, should not exceed one cent per ton per mile, provided, that where the rate of one cent per ton per mile would raise any rate then in operation, that said rate of one cent per ton per mile should not be effective, but that the rate as then charged by said railroad companies was then and there adopted in and by said order of the said railroad commissioners, as their rate between such points.

4. That the said railroad commissioners then further ordered that where a shipment of phosphate should pass over two or more railroads in reaching its destination within the State of Florida, the initial line might charge one and a half cents per ton per mile for the first ten miles which said phosphate should be hauled.

5. That the railroad commissioners then further ordered that where a shipment of phosphate from points in Florida to points in Florida should pass over two or more roads in reaching its destination within the State of Florida the provisions of rule 19, governing joint rates, are modified, so that the initial road should have the right to deliver shipments to the delivering road at such junctional point, within the State of Florida as it might desire, provided, how-

ever, that the rate charged for such shipment should be based upon the shortest mileage between the points of shipment and the point of destination.

6. That the said railroad commissioners then further ordered that the said rate therein prescribed should be effective on and after the 15th day of January, A. D. 1904. Copies of the order and of rule 19, are attached as parts of the writ, and marked Exhibits "A" and "B."

28 7. That the railroad commissioners prior to the 15th day of January, A. D, 1904, furnished all railroads doing business within the State with notice of the changes and revisions adopted by the said order, stating the time when the said changes and revisions would go into effect.

8. That although the Atlantic Coast Line Railroad Company was furnished with notice of the changes of phosphate rates as aforesaid, it has not obeyed said order, and has not put into effect the schedule of rates prescribed in and by said order, but refuses so to do, and in violation and disregard of the rate prescribed in and by said order, and contrary to the laws of Florida, now charges, and since the 15th day of January, A. D. 1904, has charged for the transportation of phosphate over its said lines of railroads, and railroads under its control or management, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by said order, and the said Atlantic Coast Line Railroad Company has refused, and still refuses, to otherwise comply with all and singular the aforesaid and other commands and directions of the said order of the said railroad commissioners made on the 17th day of December, A. D. 1903.

9. This, the ninth, paragraph concludes: "Now, therefore, we, being willing that full and speedy justice should be done in the premises, do command you, the Atlantic Coast Line Railroad Company, to forthwith put into operation and effect over all your lines of railroads, and all the railroads which are under your management and control, which are wholly or in part within the State of Florida, the rate prescribed in and by said order of the said railroad commissioners on the 17th day of December, A. D. 1903, to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State of Florida to points within said State, and do command you further to comply with all the commands and directions of said order of the said railroad commissioners, as contained in a duly certified copy of said order,

29 which is hereto attached and marked Exhibit A and made a part hereof, to the same extent as if fully set out herein, and that you continue to comply with all the commands and directions of said order, as long as the same shall be in force, or that you appear before the justices of our supreme court sitting within and for the State of Florida, at the court room in the city of Tallahassee, on the 29th day of March, 1904, at ten o'clock, a. m. of said day, and show cause why you refuse to do so, and have you then and there this writ."

"EXHIBIT A.

Order No. 34.

Railroad Commission, State of Florida.

In the Matter of Freight Rate for the Transportation of Phosphate from Points in Florida to Points Within the State of Florida.

Due notice having been given to all the railroads doing business wholly or in part within the State of Florida, that there would be a meeting of the railroad commissioners in the city of Jacksonville on the 16th day of November, A. D. 1903, for the purpose of considering the adoption of a freight rate of one cent per ton per mile on phosphate shipped from points within the State of Florida to points within said State, except to such points where the proposed rate would raise the rate in force to such points, at which time all railroad companies and common carriers would be given an opportunity to be heard and show cause, if any they had, why the proposed rates should not be adopted:

In accordance therewith the commissioners met at the board of trade rooms in the city of Jacksonville on said 16th day of November, and the railroads were given an opportunity to be heard, and answers were filed by the Atlantic Coast Line R. R., Seaboard Air Line railway, and the Jacksonville & Southwestern Ry., and request made by them that they be given until Nov. 28th in which to file their briefs and supplemental briefs, which request was granted, and the briefs having been received by the commissioners, and duly considered by them in connection with the proposed reduction in the phosphate rate, and the commissioners being satisfied that some of the present freight rates on phosphate from points in the State of Florida to points within the State, are unreasonably high, and should be reduced and based upon a mileage rate:

It is therefore ordered by the railroad commissioners of the State of Florida, that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile.

Provided, however, that where the rate of one cent per ton per mile will raise any rate now in operation, that said rate of one cent per ton per mile shall not be effective, but the rate as now charged by the railroad companies is hereby adopted by the railroad commissioners as their rate between such points.

It is further ordered, that where a shipment of phosphate shall pass over two or more railroads in reaching its destination within the State of Florida, the initial line may charge one and a half cents

per ton per mile for the first ten miles which said phosphate shall be hauled.

It is further ordered, that where phosphate from points in Florida passes over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19, governing joint rates is hereby modified, so that the initial road shall have the right to deliver the shipment to the delivering road at such junctional point within the State of Florida as it may desire.

Provided, however, that the rate charged for such shipment shall be based upon the shortest mileage between the point of shipment and the place of destination.

31 It is further ordered that this rate shall be effective on and after January 15, 1904.

Done and ordered by the railroad commissioners of the State of Florida, in session, at their office in the city of Tallahassee, Florida, this 17th day of December, A. D. 1903.

(S'd) JEFFERSON B. BROWNE, Chairman.

Attest:

R. C. DUNNE, Secretary.

I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of the order adopted by the railroad commissioners of the State of Florida, on the 17th day of December, A. D. 1903, in the matter of freight rate for the transportation of phosphate from points in Florida to points within the State of Florida, as the same appears upon the record of the proceedings of said commissioners.

Witness my hand this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad Commissioners
of the State of Florida."

"EXHIBIT B.

Joint Rates Shall be Sum of Locals.

19. On all shipments of freight not governed by rule No. 1, originating and terminating in this State, which shall pass over the whole of two or more roads not under the same control, the maximum rates charged on such shipments shall not be greater than the sum of the local rates on such freights for the distance hauled over each road. The total rate thus ascertained on such freights from the point of shipment to the point of destination shall be

32 divided in such proportions between the roads over which such freights pass so as to give to each road interested in the shipment its local rate for the distance such shipment is hauled,

conditioned upon the initial line delivering the traffic to the delivering road at its nearest junctional point. Nothing in this rule shall be construed to prevent the total of any joint rate made under this rule from being divided in such proportions between the roads interested in the same as they may agree upon, but a failure to so agree between the roads interested shall in no way affect the total joint rate to be charged and collected on, or work delay in the transportation of such freight, or be subject of appeal to the commission by the roads at interest; provided, however, that no railroad company shall discriminate between any other two or more railroad companies when the conditions and circumstances are practically the same.

I, R. Hudson Burr, as acting chairman of the railroad commissioners of the State of Florida, do hereby certify that the above and foregoing is a full, true and correct copy of rule 19, governing joint rates, as prescribed by the railroad commissioners of the State of Florida, and as the same appears upon the record of the proceedings of the said railroad commissioners.

Witness my hand this 7th day of March, A. D. 1904.

R. HUDSON BURR,
Acting Chairman of the Railroad Commissioners
of the State of Florida.

The respondent filed the following demurrer to the foregoing alternative writ: "Now comes the defendant, The Atlantic Coast Line Railroad Company, a corporation, and says that the alternative writ is bad in substance and insufficient in law to be answered.

The substantial matters of law intended to be argued are as follows: 1. Said writ does not state or specify any instance or case of a shipment of phosphate falling within the provisions of the order of the 17th day of December, A. D. 1903, as alleged by said
33 alternative writ to have been made by the railroad commission of the State of Florida, in which this defendant has disobeyed said order of December 17th, 1903, or has made a charge in excess of the rate prescribed by said order for the transportation of phosphate over its lines of railroad from points in Florida to points in Florida.

2. The said alternative writ does not state or specify any instance or case in which there has been a violation of the order of the railroad commission of the State of Florida, alleged to have been made on the 17th day of December, 1903, or set up any facts showing that there had been a violation of such order by this defendant, by charging a rate or rates in excess of the rates prescribed by said order of December 17th, 1903.

3. The alternative writ aforesaid fails to state or set forth facts showing that there has been a violation in any way by this defendant of said order of December 17th, 1903, alleged by said alterna-

tive writ to have been made by the railroad commission of the State of Florida.

4. The said alternative writ, in so far as it attempts to show any violation of the alleged order of December 17th, 1903, of the railroad commission of the State of Florida, is a mere statement of opinion and conclusion as a matter of law of the State of Florida and relators of a violation of law by defendant of said order of December 17th, 1903, alleged by said alternative writ to have been made by the railroad commission of the State of Florida, and fails to set up any fact or facts upon which this honorable court can form an opinion as to whether there has been a violation of such order of December 17th, 1903, by this defendant in any case or cases, instance or instances, of a shipment or shipments of phosphate from any point in Florida to another point in the State of Florida, falling within the provision of said order.

5. The said writ fails to inform the defendant of the specific instance or instances in which said order of December 17th, 1903, has been violated by this defendant by charging a higher rate
34 than that prescribed by said order upon shipments of phosphate from a point in Florida to a point in Florida.

6. That said alternative writ is otherwise and in all respects insufficient in law to be answered unto by this defendant.

JOHN E. HARTRIDGE,
Attorney for Defendant."

HOCKER, *J.* (*after stating the facts*):

It will be observed that the first, second, third, fourth and fifth grounds of demurrer present in various forms of statement the proposition that the alternative writ is bad and insufficient in law, because the recitals of the writ alleging a refusal of the respondent to put into effect the rates on phosphate prescribed by the order of the railroad commissioners are wanting in certainty, and amount simply to a conclusion of law. It is insisted that instances of violation should be set forth. This proceeding is instituted at the instance of an official body, the railroad commissioners, to compel the respondent to put into effect and practical operation the schedule of rates and system of rating prescribed in the order, and is not intended to compel the company to carry any particular phosphate for any particular individual. The writ recites that the order became effective on the fifteenth of January, 1904, and that respondent has not put into effect the schedule of rates prescribed therein, but refuses so to do, and in violation and disregard of the prescribed rates, now charges, and since the 15th day of January, 1904, has charged for the transportation of phosphate over its lines of railroad, and railroads under its control and management from points in Florida to points in Florida, rates in excess of the rates prescribed in and by said order, and it has refused and still refuses to comply with
35 all and singular the aforesaid, and other commands and directions of the said order of the railroad commissioners made

on the 17th day of December, A. D. 1903. We think the recitals clearly import a refusal to comply with the said order in each and all of its directions—in other words, a refusal to comply with the schedule of rates as a system of rates. The allegation that the respondent now charges, and since the 15th day of January, 1904, has charged for transportation of phosphate rates in excess of the prescribed rates, simply accentuates and points out the particular thing which respondent is alleged to be doing, signifying its refusal to put into effect the prescribed schedule of rates and its violation and disregard thereof. The recitals of this writ thus used to compel the observance of a system or schedule of rates on phosphate are of similar import to those employed by the distinguished pleader who drew the writs in the unreported case of State *ex rel.* Attorney-General v. Florida Southern Railway Company, which was presented to this court in December, 1888, to compel the observance of the schedule of rates prescribed by the railroad commission on oranges. The writ in that case was subjected to the most ingenious and rigorous criticism, but was held good by this court. The argument that if instances of violation were cited in the writ such instances could probably be considered so as to show that such instances did not come under the jurisdiction of the State railroad commission, is not constraining. Our opinion is that the question whether this or that case can be used in support of a charge of a total disregard and violation of the order of the commission, is one involving the relevancy, competency and probative force of evidence, and not one of pleading.

It is contended on several grounds that the recitals of the eighth paragraph of the writ taken separately, amount to no more than conclusions of law. We think, however, that this paragraph is to be considered as a whole, and, being so considered, is not substantially indefinite or uncertain. It is one sentence, the several recitals of which are connected by copulative conjunctions, and each
36 separate allegation is to be construed by its contextural connections. Thus considered it charges a general violation of the duty of the respondent in refusing to put the prescribed rule into practical operation, and by way of re-enforcement of this charge, that it is, and has been charging rates in excess of those prescribed. Certainty of allegation is requisite, but if the alternative writ states the facts on which the demand is based with sufficient precision to express the right of relator and the duty of the respondent in such a manner that the ordinary mind may easily apprehend them, we think this is all the certainty required to defeat a demurrer. Central D. & P. Tel. Co. v. Commonwealth, 114 Pa. St., 592, 7 Atl. Rep. 926; Fisher v. Mayor, &c., of Charleston, 17 West Va. 628; 13 Ency. Pl. & Pr., 674–5 and notes.

It is also objected that the writ does not recite the existence of phosphate, nor any tender of the same for transportation, nor refusal to transport any specific tender of phosphate at the prescribed rates. We do not think this is a tenable position on this demurrer. It is

true, that generally material facts should be alleged by direct averment, and not by inference, but unequivocal averments will support implications that necessarily result, at least, on general demurrer. 6 Ency. Pl. & Pr., 269; State *ex rel.* Attorney-General v. Johnson, 35 Fla. 2. Special demurrers, which at common law reached defects of formal statement, are abolished in this State. This court, like other courts, will take judicial notice of matters of common knowledge, and, therefore, knows that phosphate is produced in some portions of Florida, and is an article of transportation. The allegation that excessive charges are made for the transportation of phosphate necessarily implies that phosphate is tendered for transportation, and is transported, for if it were not actually tendered and offered for transportation, it could not be transported.

It is objected that the phrase "put into effect" and the word "charge," used in the eighth paragraph, and the mandatory clause are indefinite, and indeterminate in their meaning. To put
37 a rate into effect is to charge and receive that rate when the article to which it applies is transported; in other words, to give it practical operation. To charge is to "lay on," or "impose" as a load, tax or burden, to fix or demand a price for a thing or service. The phrase and word are of the most common use, and we fail to see how there can be any substantial difficulty in discovering their meaning.

We might close the opinion at this point, but the discussion both orally and in the briefs has taken a wider range than is indicated in any ground of the demurrer. It is insisted that the order of the railroad commissioners is void, because it prescribes a less rate than one cent a ton per mile, where at the date of the order, a less rate was then being charged, which in effect amounts to a discrimination in favor of certain individuals, classes or communities and which is prohibited by the railroad commission act, chapter 4700, Laws of 1899. We discover nothing in the act or the order properly construed, which sustains this contention. Railroads and common carriers, it is true, are inhibited from making unjust discriminations in rates (sec. 4), but we discover nothing in the act which limits the discretionary powers of the railroad commission to make reasonable and just rates. It does not necessarily follow that in prescribing a particular rate lower than the general one, the commission have violated their authority. There may be circumstances which would justify such lower rates, and the act itself (sec. 8) makes the rates and regulations prescribed by the commission *prima facie* reasonable and just. The proviso of the order properly construed applies only to general rates to the public, and not to special rates given by railroad companies to individuals, if any such were given, as contended by the defendant.

It is further contended in argument that mandamus does not lie to enforce a continuing duty. We do not think this a sound contention. In the case above cited, as also in the case of State *ex rel.* Attorney-General v. Pensacola & A. R. Co., 27 Fla. 403, 9 South.

Rep. 89, and State *ex rel.* Attorney-General v. Jacksonville
38 Terminal Company, 41 Fla. 377, 27 South. Rep. 225, some portions of the duties enforced by mandamus were of a continuing nature. See also Attorney-General v. City of Boston, 123 Mass. 460; People *ex rel.* Jackson v. Suburban R. Co., 178 Ill. 574, 53 N. E. Rep. 349; People v. New York Central and Hudson River R. R. Co., 28 Hun. 543, and particularly Goodel v. Woodbury, 71 N. H. 378, — Atl. Rep. —; Town of Mason v. Railroad Co., 51 West Va. 183, — S. E. Rep. —. And there is no doubt that mandamus is an appropriate remedy to compel observance of a valid regulation of the railroad commissioners imposing specific public duties upon railroad companies. 2 Elliott on Railroads, sections 697 *et seq.*; State v. Fremont, E. & M. V. R. Co., 22 Neb. 313, 35 N. W. Rep. 118; City of Potwin Place v. Topeka Ry. Co., 51 Kan. 609, 33 Pac. Rep. 309. See also, State *ex rel.* City of Bridgeton v. Bridgeton & M. Traction Co., 62 N. J. L. 592, 43 Atl. Rep. 715.

It is contended that the mandatory clause of the writ is broader in its terms and meaning than its recitals will support. We do not regard this as a sound contention. We deem it proper to say here, in order to prevent misapprehension, that we regard the recitals and mandatory part of the writ as embracing but one subject and purpose, viz: as reciting a total violation in each and all its directions of the order of the railroad commissioners, and as seeking to compel respondent to observe and put said order into effect and practical operation as a totality. Upon a proper issue joined if the relator does not show that respondent was and is violating and refusing to observe the several rates which make up the whole schedule, the question would arise whether a peremptory writ could be issued. State *ex rel.* Moody v. Call, 39 Fla. 165, 22 South. Rep. 266; Florida, C. & P. R. Co. v. State *ex rel.* Town of Tavares, 31 Fla. 482, 13 South. Rep. 103; Tapping on Mandamus, top page 369 (marg. *324); Haskins v. Board of Supervisors of Scott Co., 51 Miss. 406; Fisher v. Mayor, &c., of the City of Charleston, 17 West Va. 628.

39 The demurrer is overruled and the respondent is required to file its return showing obedience to the mandate of the alternative writ, or cause why it is not obeyed, on or before the 12th day of July, A. D. 1904.

Taylor, C. J., and Cockrell, J., concur.

Carter, P. J., and Shackleford and Whitfield, JJ., concur in the opinion.

40 And thereafter on the same day, the 28th day of June, A. D. 1904, the supreme court entered its judgment ordering that the demurrer be overruled, and requiring the respondent to file its return showing obedience to the mandate of the alternative writ, which judgment is in the words and figures as follows, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

41 THE STATE OF FLORIDA *ex Rel.* W. H. Ellis, as Attorney General of the State of Florida, and J. M. Barrs, as Special Counsel of the Railroad Commissioners of the State of Florida, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina, Defendant.
} Mandamus. (#2.)

This cause coming on to be heard upon the demurrer of the respondent to the alternative writ of mandamus, and having been submitted on briefs and oral argument of counsel for the respective parties, and the court having considered the same and being now advised of its judgment in the premises, it is considered, ordered and adjudged that the said demurrer be and the same is hereby overruled, and the respondent is required to file its return showing obedience to the mandate of the alternative writ of mandamus, or cause why it is not obeyed, on or before Tuesday, the 12th day of July proximo.

The opinion of the court in this cause was this day read by Mr. Justice Hocker, and ordered to be filed.

And afterwards, to-wit, on the 5th day of July, A. D. 1904, the respondent filed a motion for an extension of the time heretofore allowed to file its return, which motion is in the words and figures following, to-wit:

In the Supreme Court of the State of Florida.

STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney General, *et al.*
vs.
SEABOARD AIR LINE RAILWAY COMPANY.
} Motion.

42 Now comes the above entitled respondent by Geo. P. Raney, its attorney, and moves the court to extend the time heretofore allowed said respondent to file its return or answer to the alternative writ until the first Monday in August, 1904.

GEO. P. RANEY,
Attorney for Respondent.

And on the same day, to-wit, the 5th day of July, A. D. 1904, counsel for the respondent filed his affidavit in support of the motion to extend the time heretofore allowed to file return or answer to the alternative writ, which affidavit is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

STATE OF FLORIDA *ex Rel.*
vs.
SEABOARD AIR LINE RAILWAY. } Mandamus.

STATE OF FLORIDA,
Leon County.

Personally appeared Geo. P. Raney, and he being duly sworn deposes and says that he is division counsel of the above named defendant for the State of Florida, and, as such, is in charge of the defense of said defendant to the above writ of mandamus; and that it is the purpose of said defendant in good faith and by advise of counsel to prepare and file herein an answer to the alternative writ of mandamus herein, and to set up and state therein the facts relied upon by defendant as causes why said alternative writ should not be made peremptory; that this affiant believes that the facts intended to be set up and stated in said answer by said respondent constitute a good cause why
43 said peremptory writ should not be granted, and that it is necessary for the defense of this case and the protection of the legal rights of defendant that such answer should be filed, and that it would be a wrong and hardship upon it to make said alternative writ peremptory without giving respondent reasonable and sufficient time to prepare and file its answer herein. That the first notice received by the respondent of the overruling of its demurrer to said writ was by a letter from the clerk of the above court to affiant, received on the 29th day of June, 1904; that affiant immediately applied to the clerk of the above court for a copy of the opinion, and that such copy was not received by affiant until the afternoon of July 1st, 1904; that since the receipt of such notice and copy of opinion the defendant has been busily and constantly engaged in the preparation of other business requiring immediate attention, and, among other things, the preparation of a brief in a case in the circuit court of the United States for the northern district of Florida. That the proper preparation of the defense of the defendant requires conference with the general officers of the respondent company now in Portsmouth, Virginia, and the obtaining of information from them, and conference with other persons, and that such conferences can not be had immediately owing to the distance from affiant of such officers; that the proper preparation of respondent's answer will, in the opinion of affiant, require much more time than was allowed by the order of the court overruling the demurrer; and that affiant believes that it should be allowed until the first day of August next for answering, and that this will not give respondent any more than a reasonable and requi-

site time for properly preparing the answer of defendant to such alternative writ of mandamus.

GEO. P. RANEY.

Sworn to and subscribed before me this 5th day of July, 1904.
[SEAL.]
B. B. WILSON,
Clerk Supreme Court.

44 And on the same day, to-wit: on the 5th day of July, A. D. 1904, the supreme court made an order extending the time for the defendant to file its answer, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-General, *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, Defendant.

This cause coming on to be heard upon motion of counsel for the defendant for an extension of time until the first Monday in August proximo in which to file its answer to the alternative writ of mandamus herein; and upon consideration thereof it is ordered that the time for filing such answer be extended until Tuesday, the 19th instant.

And afterwards, on the 19th day of July, A. D. 1904, the defendant filed its return to the alternative writ of mandamus, which return is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of the State of Florida, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of said State,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation, &c.

45 The Return of The Seaboard Air Line Railway, a Corporation, the Defendant, to the Alternative Writ of Mandamus in the Above Cause.

The Seaboard Air Line Railway, defendant aforesaid, for return to said alternative writ of mandamus says:

I.

That it is not true that this respondent has, since the 15th day of January, 1904, charged or received for the transportation of phos-

phate over its lines of railroads and railroads under its control and management, or either, or over any part of said lines of line of railroad, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by the order of the railroad commission of December 17th, 1903, mentioned in the alternative writ of mandamus.

II.

And for a further and additional return to such writ, respondent says:

That it is not true that this respondent has, since the 15th day of January, 1904, charged or received for the transportation of phosphate over its lines of railroads and railroads under its control and management, or either, or over any part of said lines or line of railroad from points in Florida to points in Florida, rates in excess of the rates prescribed in and by the order of the railroad commission of December 17th, 1903, mentioned in the alternative writ of mandamus; and defendant further says that there has been no tender or offer to respondent of any phosphate for transportation by it on a shipment thereof from a point in Florida to a point in Florida since the said 15th day of January, 1904.

III.

And for a further and additional return to said writ, respondent says:

46 That it is not true that this respondent has, since the 15th day of January, 1904, charged for the transportation of phosphate over its lines of railroads and railroads under its control and management, or either, or any part of said lines or line of railroad, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by the order of the railroad commission of the State of Florida, mentioned in the writ of mandamus, and bearing date the 17th day of December, 1903, or has otherwise refused to comply with any of the commands and directions of said order of the railroad commission.

IV.

And for a further and additional return to said writ, respondent says:

That it is not true that this respondent has, since the 15th day of January, 1904, charged for the transportation of phosphate over its lines of railroads and railroads under its control and management, or either, or any part of said lines or line of railroad, from points in Florida to points in Florida, rates in excess of the rates prescribed in and by the order of the railroad commission of the State of Florida, mentioned in the writ of mandamus, and bearing date the 17th day of December, 1903, or has otherwise refused to comply with any of the commands and directions of said order of the railroad commission; and defendant further says that there has been no

tender or offer to respondent of any phosphate for transportation by it, on a shipment thereof from a point in Florida to a point in Florida since the said 15th day of January, 1904.

V.

And for a further and additional return to said alternative writ of mandamus, respondent says:

That the tariff, rate and schedule of rates prescribed by the order of the railroad commission of the State of Florida, mentioned in the alternative writ, and bearing date December 17th, 1903, does not give to the defendant a reasonable and just tariff of rates for
47 the shipments covered thereby; and that such tariff of rates with the tariff of freight and passenger rates now in operation over the lines of railroad of the respondent, Seaboard Air Line Railway, are not sufficient to afford, and do not afford, the respondent a reasonable income from the operation of its said lines, or, in fact, any net income from the operation of said lines of railroad in the conduct of business of said lines local to the State of Florida including the earnings from said lines of railroad in Florida from interstate and foreign commerce over and above the reasonable cost of constructing, maintaining and operation said railroad; and that the enforcement of said rates of said railroad commission would result in depriving respondent of its property without due process of law and of the equal protection of the law, contrary to the guarantees of the Constitution of the United States and the amendments thereto.

SEABOARD AIR LINE RAILWAY,
By GEO. P. RANEY, Att'y.

GEO. P. RANEY,
Att'y for S. A. L. Ry., Def't.

STATE OF VIRGINIA, }
City of Portsmouth. }

Before me, Jno. H. Boatwright, a notary public in and for the city of Portsmouth (Va.), personally appeared J. M. Barr, and he being duly sworn deposes and says that he is president and general manager of the Seaboard Air Line Railway, a corporation under the laws of the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, respondent in the above proceedings; and that the statements made in the above return are true.

J. M. BARR.

Attest:
[SEAL.] ROB'T L. NUSS, Ass't Sec'y.

Sworn to and subscribed before me this 16th day of July, 1904.
[SEAL.] JNO. H. BOAT VRIGHT,
Notary Public in and for the
City of Portsmouth, Virginia.

My term as notary public expires Feb. 14, 190–.

I hereby certify that this is a case in which, by the laws of Virginia, no tax is required upon the seal.

JNO. H. BOATWRIGHT,
Notary Public.

And afterwards, to-wit: on the 21st day of July, A. D. 1904, the supreme court made an order that the plaintiff plead to the return of the defendant, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-General, *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RY. CO., Defendant.

48 The defendant having filed its return to the alternative writ of mandamus issued herein within the time heretofore fixed by the order of the court, it is ordered that the plaintiff plead to such return on or before Tuesday, the 26th instant.

And afterwar-s, to-wit: on the 26th day of July, A. D. 1904, the plaintiff makes a motion to quash the return of the respondent to the alternative writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of the State of Florida, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of said State,
vs.
THE SEABOARD AIR LINE RAILWAY COMPANY, a Corporation, etc.

Motion of the Plaintiff to Quash the Return of the Respondent to the Alternative Writ of Mandamus in the Above Entitled Cause.

And now comes the plaintiff in the above entitled cause by W. H. Ellis, as attorney general for the State of Florida, and J. M. Barrs as special counsel for the railroad commissioners of said State, and moves the court to quash the return of the respondent to the said alternative writ of mandamus, and to issue a peremptory writ of mandamus herein; and for the grounds of its said motion the plaintiff shows the court the following:

49 1. Said return is frivolous and evasive.

—. The defenses set up in said return are contradictory and inconsistent.

3. Said return is argumentative and stated conclusions of law.
4. Said return does not state facts relied upon as a defense with such precision and certainty as to advise the court of all particulars necessary to enable them to pass judgment upon the sufficiency of the return.
5. Said return is insufficient to show why the peremptory writ should not issue.

WM. H. ELLIS,
Attorney General of the State of Fla.
J. M. BARRS,
Special Counsel for the Railroad Commissioners of Florida.

And upon the same day, to-wit, the 26th day of July, A. D. 1904, the respondent filed a motion for leave to file amendment to its return heretofore made, which motion is in the words and figures following, to-wit:

In the Supreme Court of the State of Florida, June Term, 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-General, and J. M. Barrs, as Special Counsel of the Railroad Commission of said State.
vs.
SEABOARD AIR LINE RAILWAY COMPANY, ETC.

50 Motion.

Now comes the Seaboard Air Line Railway Company and moves the court for leave to file the attached amendment to its return heretofore made herein to the alternative writ of mandamus in this cause.

GEO. P. RANEY,
Attorney and of Counsel for Respondent.

And upon the same day, to-wit, on the 26th day of July, A. D. 1904, the supreme court made an order that the amendment be filed, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney General, *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RY. COMPANY, Defendant.

This cause coming on to be heard upon motion of counsel for the defendant for leave to file an amendment to its return heretofore filed, and upon consideration thereof it is ordered that the amend-

ment be filed, and that the State plead thereto on or before Friday, the 29th instant.

And upon the same day, to-wit: the 26th day of July, A. D. 1904, the defendant filed its amendment to its return, which amendment is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

51 THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General, and J. M. Barrs, as Special Counsel for the Railroad Commission of said State,

vs.

SEABOARD AIR LINE RAILWAY, a Corporation, etc.

Amendment to Return of The Seaboard Air Line Railway, a Corporation, etc., Defendant, Filed July 19th, 1904, to the Alternative Writ of Mandamus in the Above Cause.

The Seaboard Air Line Railway, defendant, aforesaid, with leave of court first had and obtained, amends the return filed as above stated and numbered V so that such fifth return shall read as follows:

And for a further and additional return to said alternative writ of mandamus respondent says that the passenger and freight tariff prescribed by the railroad commissioners of the State of Florida to be observed by the defendant in the carriage of freight and passengers in the State of Florida, including the schedule or tariff of rates sought to be enforced in this proceeding, are unreasonable and do not give to the defendant fair and reasonable compensation for the services required to be performed by it in the carriage of such freight and passengers; and that the enforcement of such tariff and rates of said Florida railroad commission will result in depriving respondent of its property without due process of law and of the equal protection of the laws contrary to the guarantees of the Constitution of the United States and the amendments thereof.

SEABOARD AIR LINE RAILWAY,
By GEO. P. RANEY,
Division Counsel for Florida.

52 GEO. P. RANEY,
Attorney for Defendant.

STATE OF FLORIDA, County of Duval, } *ss:*

Before me, A. V. S. Smith, a notary public in and for the State of Florida at large, personally appeared D. E. Maxwell, and he being duly sworn deposes and says that he is general agent of The Seaboard Air Line Railway, a corporation, etc., respondent in the above proceedings, and that the statements made in the above return are true.

D. E. MAXWELL.

Sworn to and subscribed before me this 25th day of July, 1904. Witness my hand and official seal.

[SEAL.] A. V. S. SMITH,
Notary Public in and for State of Florida at Large.

And afterwards, to-wit, on July 29th, A. D. 1904, the plaintiff filed its motion to quash the amended return and to issue a peremptory writ of mandamus, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of the State of Florida, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of said State,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation, etc.
} #2.

53 Motion of the Plaintiff to Quash the Amended Return of the Respondent to the Alternative Writ of Mandamus in the Above Entitled Cause.

And now comes the plaintiff in the above entitled cause by W. H. Ellis as attorney general for the State of Florida, and J. M. Barrs as special counsel for the railroad commissioners of said State, and moves the court to quash the amended return of the respondent to the said alternative writ of mandamus and to issue a peremptory writ of mandamus herein; and for the grounds of its said motion the plaintiff shows the court the following:

1. Said return is frivolous and evasive.
2. The defenses set up in said return are repugnant and inconsistent.
3. Said return is argumentative and states conclusions of law.
4. Said return does not state facts relied upon as a defense with such precision and certainity as to advise the court of all particulars necessary to enable them to pass judgment upon the sufficiency of the return.
5. Said return is insufficient to show why a peremptory writ of mandamus should not issue.

WM. H. ELLIS,
Attorney General of the State of Florida.
J. M. BARRS,
Special Counsel for the Railroad Commissioners of Florida.

54 And on the same day, to-wit: the 29th day of July, A. D 1904, the supreme court made an order in the words and figures following:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-general, &c., *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RY. CO., Respondent.

This cause is this day submitted to the court upon motions of counsel for the plaintiff to quash the returns of the respondent, and for a peremptory writ of mandamus, but the court not being advised of its judgment in the premises, time is taken to consider thereof.

And afterwards, to-wit: on the 30th day of July, A. D. 1904, the supreme court made an order that the motions to quash the returns of the respondent and for a peremptory writ of mandamus, be granted in part and denied in part, and that further time be granted respondent to apply for leave to file further amended return, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-general, *et al.*, Plaintiffs,
vs.
SEABOARD AIR LINE RY. CO., Respondent. (No. 2.)

55 This cause having been submitted to the court upon motion of plaintiffs to quash the returns of the respondent and for a peremptory writ of mandamus, upon consideration thereof it is ordered that the motion, in so far as it relates to the first four returns, be and the same is hereby granted; and it is further ordered that the motion, in so far as it relates to the 5th amended return, be and the same is hereby denied. Counsel for the respondent asking time within which to apply for leave to file further amended return to the alternative writ, time is granted until Monday next at 10 o'clock a. m.

And afterwards, to-wit: on the 1st day of August, A. D. 1904, the plaintiff joins issue on the fifth amended return of the respondent, and files its motion for an order to take testimony on the issues joined, which motion is in the words and figures following, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS of the State of Florida, &c.,
vs.
THE SEABOARD AIR LINE RAILWAY, &c. } (#2.)

Joinder of Issues on Return and Motion for Order to Take Testimony.

Now comes the State of Florida and joins issue upon the fifth amended return of respondents to the alternative writ of mandamus issued herein and moves the court for an order to take testimony on the issues joined.

W. H. ELLIS,
Attorney General of the State of Florida.
J. M. BARRS,
Special Counsel for the State of Florida.

56 And on the same day, to-wit: on the 1st day of August, A. D. 1904, the supreme court made an order that the cause be set for trial on the 4th day of October, A. D. 1904, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, Attorney-general, &c., *et al.*, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, Respondent. } (No. 2.)

Counsel for the respondent having announced in open court that it did not desire to apply for leave to further amend its return, comes now the plaintiff and files its joinder of issue upon the amended return of the respondent to the alternative writ of mandamus herein, and moves for an order to take testimony on the issues joined; and thereupon the cause being at issue, it is ordered that same be set for trial on the 4th day of October, A. D. 1904, upon which day the parties are required to produce their testimony before the court. In the meantime, if either party so desires, it may take depositions of witnesses, upon commission issued by the clerk of this court, or before a justice of the peace in accordance with the statutes of this State and the rules governing circuit courts in the matter of depositions; and the clerk of this court is directed to issue commissions for the taking of such depositions as may be applied for by either party, in accordance with such statutes and rules.

57 And afterwards, to-wit: on the 4th day of October, A. D. 1904, the supreme court made an order that the case be continued for hearing until the 12th instant, which order is in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* R. R. COMMISSIONERS ET AL., Relators, vs. SEABOARD AIR LINE R'Y CO., Defendant. } No. 2.

This cause having been set for trial on this day, now upon application of counsel for the respondent it is ordered that the same be continued for hearing on Wednesday, the 12th instant.

And afterwards, to-wit: on the 12th day of October, A. D. 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Plaintiff, vs. SEABOARD AIR LINE RAILWAY, Defendant. } No. 2.

58 This cause being at issue and being set for trial on this day, come now the parties by their counsel, and the defendant produces and files as evidence the annual report of the Seaboard Air Line Railway for the year ending June 30, 1904, filed with the railroad commission, and the seventh annual report of the railroad commission; and the plaintiff's counsel announcing that he would introduce no testimony, thereupon the case is continued for argument until to-morrow.

And afterwards, to-wit: on the 13th day of October, A. D. 1904, the supreme court made an order in the words and figures following, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* THE RAILROAD COMMISSIONERS *et al.*, Plaintiff, vs. SEABOARD AIR LINE RAILWAY, Defendant. } No. 2.

In pursuance of an order entered herein on yesterday, this cause is now submitted on the evidence introduced at that time and the

argument of counsel for the respective parties, but the court not being advised of its judgment in the premises, time is taken to consider thereof.

And afterwards, to-wit: on the 19th day of October, A. D. 1904. the supreme court of Florida filed with the clerk of said court its opinion in said cause, which opinion is in the words and figures as follows, to-wit:

59 In the Supreme Court of Florida, June Term, A. D. 1904.
En Banc.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-general of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,
v.
SEABOARD AIR LINE RAILWAY, a Corporation, Respondent.
} No. 2. Original.

COCKRELL, *J.:*

The issues raised by the amended return filed herein July 26, 1904, are the same as those raised in the Atlantic Coast Line case, just decided, that is whether the phosphate rate sought to be enforced herein is in and of itself unreasonable, and whether said rate taken in connection with the other rates enforced by the State railroad commission on local business would deprive the railway of its property without due process of law or deny to it the equal protection of the law within the inhibition of the Federal Constitution. Under the law the burden is upon the respondent to establish both these propositions.

The only proof offered was the sworn report of the railway company to the railroad commission of Florida for the year ending
60 June 30, 1904; this report was admitted without objection. There is nothing in the report that tends to show that the rate is of itself unreasonable nor in fact any evidence that bears even remotely upon the specific rate, nor what the present voluntary rate is.

There was merely a suggestion in the argument that such rate is inherently unreasonable because the railway might be called upon to carry phosphate for one mile only and that this could not be done profitably at the rate prescribed. Such an argument is too speculative to be safely followed, and in the absence of an affirmative showing that the common carrier is face to face with such problem, that the actual test has been applied, we do not feel that the solemn finding of the railroad commission should be overthrown. There is no showing that phosphate is carried locally

nor what may be charged for shipping the commodity in interstate or foreign commerce.

The respondent further fails to meet the burden of showing that the rate prescribed together with the other rates in force deprive the respondent of a right guaranteed by the Constitution of the United States. It is impossible to ascertain from this showing what may be the operating expenses or the value of the road in Florida. There are given figures to show that the total cost of construction, equipment, &c., of the road in Florida has been about fifteen and a half million dollars, but nothing to show what the depreciation has been nor what the present value is. To questions asked by the railroad commission as to expenses of fuel and other operating items, the respondent replied that it could not answer by States. It seems that the respondent in operating its line through several States has a scheme of distributing its incomes and expenses according to States, but this scheme is not made clear to us, nor has it so divided its domestic and foreign business that we can say that the net earning of only 3½ per cent. on the total cost of construction, equipment, &c., is a confiscation of its property, or in anywise an infringement upon its constitutional rights.

61 The court finds that the rate in question is not unreasonable and the court further finds that such rate, taken in connection with the other rates prescribed by the Florida railroad commission, does not deprive the respondent of its property without due process of law nor of the equal protection of the law.

Mr. Justice Carter, before being called away by reason of illness in his family, took part in the consideration of this case and concurred in the conclusions announced.

The peremptory writ will be awarded.

Taylor, C. J., Shackleford, Hocker and Whitfield, JJ., concur. Carter, J., absent.

62 And thereafter on the same day, the 19th day of October, A. D. 1904, the supreme court of Florida entered its judgment in favor of the plaintiff and ordered that a peremptory writ of mandamus issue, which judgment is in the words and figures as follows, to-wit:

Supreme Court of Florida, June Term, A. D. 1904.

63 THE STATE of FLORIDA *ex Rel.* W. H. Ellis, as Attorney-general of said State, and J. M. Barrs, as Special Counsel for the Railroad Commissioners of the State of Florida, Plaintiff,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation, Defendant. } No. 2. Original.

This cause coming on to be heard upon the amended return of the respondent filed by leave of the court July 26, 1904, and the joinder of issue upon the amended return of the respondent to the alternative writ of mandamus issued herein, and upon the documentary evidence in behalf of the respondent submitted on the 12th instant, and having been argued by counsel for the respective parties, and the court having considered the same, and being now advised of its judgment in the premises, finds the issues in favor of the plaintiff; therefore it is ordered that the peremptory writ of mandamus be and the same is hereby granted; and it is further ordered that the plaintiff do recover of the respondent its costs by it in this behalf expended, which costs are taxed at the sum of —; and it is further ordered that the respondent is required to make return to this court instanter of its full compliance with the commands of the said peremptory writ of mandamus.

The opinion of the court in this cause was this day read by Mr. Justice Cockrell and ordered to be filed.

64 And afterwards, to-wit: on the 2nd day of November, A. D. 1904, came the respondent, by counsel, and filed in open court before the chief-justice its petition for the allowance of a writ of error to the judgment heretofore rendered herein returnable before the Supreme Court of the United States, which petition is in the words and figures as follows, to-wit:

In the Supreme Court of the State of Florida, June Term, A. D. 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-general of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,

vs.

THE SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina.

Mandamus. No. 2.

To the Honorable R. Fenwick Taylor, chief-justice of the supreme court of the State of Florida:

The petition of the Seaboard Air Line railway, a body corporate under the laws of the States of Virginia and North Carolina, the respondent in the above stated cause, showeth that a final judgment was rendered by the said supreme court of the State of Florida in said cause on the 19th day of October, A. D. 1904, and that said cause is an action by writ of mandamus in said supreme court of Florida in the exercise of its original jurisdiction; and that in and by said judgment a peremptory writ of mandamus was awarded against respondent, compelling the respondent to put into
65 effect and operation a schedule and tariff of freight for the carriage of phosphate from points in Florida to points in Florida prescribed by the railroad commissioners of the State of Florida by an order made on the 17th day of December, A. D. 1903; and that in and by the amended fifth return of respondent to the alternative writ of mandamus in said cause it was alleged by respondent that the passenger and freight tariff prescribed by the railroad commissioners of the State of Florida to be observed by respondent in the carriage of freight and passengers in the State of Florida, including the schedule or tariff of rates sought to be enforced in this proceeding, were unreasonable, and did not give to the respondent fair and reasonable compensation for the services required to be performed by it in the carriage of freight and passengers and that the enforcement of such tariff of rates of said Florida railroad commission would result in depriving respondent of its property without due process of law and of the equal protection of the laws, contrary to the guarantees of the Constitution of the United States and the amendments thereof. That by the decision and judgment of the said supreme court of the State of Florida, rendered upon the issues made by said amended fifth return after the hearing of testimony in the cause, it was adjudicated by said supreme court of Florida both that the rate so prescribed by said order of the railroad commission was not unreasonable and that

said rate, taken in connection with the other rates prescribed by the said railroad commission, does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibition of the Federal Constitution.

The said supreme court of the State of Florida is the highest court of the State of Florida having jurisdiction of said cause, and said judgment is a final judgment in the highest court of the State of Florida in which a decision in said suit could or can be had.

66 Your petitioner, therefore, prays your honor to allow a writ of error to the said respondent in the above stated cause, returnable to the Supreme Court of the United States, according to the rules of said last named court, the acts of Congress and the Constitution of the United States in such cases made and provided; and that your honor will fix the amount of the penalty of bond to be given by petitioner and to operate as a supersedeas to the enforcement of such judgment of the supreme court of Florida.

And your petitioner, as in duty bound, will ever pray.

GEO. P. RANEY,
Attorney for Seaboard Air Line Railway.

Whereupon on the same day, the 2nd day of November, A. D. 1904, the prayer of the petitioner was granted by an order in the words and figures as follows, to-wit:

Upon reading and considering the foregoing petition, and it appearing that the cause is one in which the Seaboard Air Line Railway is entitled to a writ of error under the Constitution of the United States and the acts of Congress, the writ of error hereby prayed for is hereby allowed; and the amount of the penalty of the bond to be given by petitioner to operate as a supersedeas to the enforcement of the judgment of the supreme court of Florida is hereby fixed at two thousand dollars.

Done at Tallahassee, Florida, this 2nd day of November, A. D. 1904.

R. F. TAYLOR,
Chief Justice Supreme Court of Florida.

67 And thereafter upon the same day, the 2nd day of November, 1904, upon presentation to the chief-justice of the aforesaid petition for and allowance of a writ of error, the same was allowed by the chief-justice as appears upon the original writ of error, the original of which writ of error, with the allowance thereof, is in the words and figures as follows, to-wit:

68 THE UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the supreme court of the State of Florida, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court of the State of Florida before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit between The State of Florida upon the relation of W. H. Ellis as attorney-general of said State, and J. M. Barrs as special counsel for Jefferson B. Browne, John L. Morgan and R. Hudson Burr, railroad commissioners of said State, and The Seaboard Air Line Railway, a body corporate under the laws of the States of Virginia and North Carolina, wherein was drawn in question the validity of an authority exercised under said State on the ground of the same being repugnant to the Constitution of the United States as depriving said Seaboard Air Line railway of its property without due process of law, and of the equal protection of the laws, and the decision was in favor of the validity of such authority, a manifest error hath happened to the great damage of the said Seaboard Air Line railway, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first day of December, A. D. 1904, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court of the United States, the 2nd day of November, in the year of our Lord nineteen hundred and four.

[Seal U. S. Circuit Court, Northern Dist. of Florida.]

F. W. MARSH,
Clerk United States Circuit Court, Fifth Circuit
and Northern District of Florida.
By J. J. HODGES,
Dep. Clerk.

Writ of error allowed November 2nd, 1904.

R. F. TAYLOR,
Chief Justice Supreme Court of Florida.

[Endorsed:] Filed Nov. 2, 1904. B. B. Wilson, clerk supreme court.

69 And upon the same day, the 2nd day of November, A. D. 1904, a citation was allowed by the chief-justice as appears by the original thereof, which original citation, with acceptances of service thereof by the attorneys for the defendant in error, is in the words and figures as follows, to wit:

70 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the State of Florida upon the relation of W. H. Ellis, as attorney-general of said State, and J. M. Barrs, as special counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, railroad commissioners of said State, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first day of December, A. D. 1904, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Florida wherein The Seaboard Air Line Railway, a corporation under the laws of the States of Virginia and North Carolina, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the final judgment therein rendered against the said plaintiff in error on the 19th day of October, 1904, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, this the second day of November, in the year of our Lord nineteen hundred and four (A. D. 1904).

R. F. TAYLOR,
Chief Justice of the Supreme Court of Florida.

By the chief-justice:

[Seal Supreme Court of the State of Florida.]

Attest: B. B. WILSON,
Clerk Supreme Court, State of Florida.

Service accepted this Nov. 3rd, 1904.

W. H. ELLIS,
Att'y Gen'l of State of Florida.

Service accepted this 4th day of November 1904.

J. M. BARRS,
Special Counsel for Railroad Commissioners
of the State of Florida.

[Endorsed:] The State of Florida *ex rel.* W. H. Ellis as att'y-gen., etc. v. Seaboard Air Line R'y. (# 2.) Citation. Filed Nov. 11, 1904. B. B. Wilson, clerk supreme court.

71 And thereafter on the same day, the 2nd day of November, A. D. 1904, the original supersedeas bond of the plaintiff in error in this writ of error, approved by the Honorable R. F. Taylor, chief-justice of the supreme court of Florida, was filed, which supersedeas bond is in the words and figures as follows, to-wit:

Approved as to form.

LEIGH R. WATTS
General Counsel.

Know all men by these presents, that we, the Seaboard Air Line railway, a body corporate under the laws of the States of Virginia and North Carolina and other States, as principal, and the United States Fidelity & Guaranty Company of Baltimore, a body corporate under the laws of the State of Maryland, as surety, are held and firmly bound unto the State of Florida in the sum of two thousand dollars, to be paid unto the State of Florida, its successors and assigns; the payment of which amount, well and truly to be made, we bind ourselves and our successors jointly and severally firmly by these presents.

Sealed with our seals this the 2nd day of November, A. D. 1904.

Whereas, lately at a term of the supreme court of the State of Florida, in a cause pending in said court wherein The State of Florida upon the relation of William H. Ellis as attorney-general of said State, and J. M. Barrs as special counsel for Jefferson B. Browne, John L. Morgan and R. Hudson Burr, railroad commissioners of said State, was plaintiff, and the said Seaboard Air Line Railway, which is described in said proceedings as a body corporate under the laws of Virginia and North Carolina, was defendant, a final judgment was rendered in and by said court against said defendant on the 19th day of October, in the year 1904, awarding a peremptory writ of mandamus against said Seaboard Air Line railway, commanding it to put into operation and effect the rate prescribed by an order of the railroad commissioners of the
72 State of Florida made on the 17th day of December, 1903, for transportation of phosphate from points in the State of Florida to points within said State; and,

Whereas, the Seaboard Air Line railway is about to apply to the chief-justice of the supreme court of the State of Florida for the allowance of a writ of error to the Supreme Court of the United States for a review by said Supreme Court of the United States of the aforesaid judgment of the said supreme court of the State of Florida;

Now, therefore, the condition of the above obligation is such, that if the said Seaboard Air Line railway shall make such application to the chief-justice of said supreme court of the State of Florida and the chief-justice of said supreme court of the State of Florida shall allow such writ of error and the Seaboard Air Line railway shall prosecute said writ of error to effect, and shall answer all damages and costs that may be awarded against said company if it fails to

make good its plea, then the above obligation to be void, but otherwise to remain in full force and virtue.

[Seal of Seaboard Air Line Railway.]

SEABOARD AIR LINE RAILWAY,
By J. M. BARR.

Attest: ROB'T L. NUTT,
Ass't Secretary.

[Seal of U. S. Fidelity and Guaranty Company.]

UNITED STATES FIDELITY & GUARANTY COMPANY,
By R. W. WILLIAMS, JR., AND R. W. WILLIAMS,
Its Attorney- in-fact.

Approved this Nov. 2nd, 1904.

R. F. TAYLOR,
Chief Justice Supreme Court of Florida.

73 And thereafter on the same day, the 2nd day of November, A. D. 1904, the plaintiff in error, by its attorney, filed in said supreme court of Florida its assignment of errors on the writ of error to the Supreme Court of the United States, the original of which is in the words and figures as follows, to-wit:

74 In the Supreme Court of the State of Florida, June Term, A. D 1904.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney-general of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State, vs. SEABOARD AIR LINE RAILWAY, a Corporation Under the Laws of Virginia and North Carolina, Defendant.	Mandamus.	No. 2.

Now comes the respondent above named, and in connection with its petition for writ of error, assigns the following errors in the action and proceedings of the said the supreme court of the State of Florida in said cause:

First. The court erred in overruling and adjudging insufficient in law the demurrer of the respondent to the alternative writ of mandamus in said cause.

Second. The court erred in granting the motion of the plaintiff to quash the return of the respondent to the alternative writ of mandamus, and holding said return insufficient in law.

Third. The court erred in its final judgment awarding the peremptory writ of mandamus.

Fourth. The court erred in its final judgment awarding the peremptory writ of mandamus and in adjudging that the rate prescribed by the order of the railroad commissioners of the State of Florida of the 17th day of December, 1903, was not unreasonable.

Fifth. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the order of the railroad commission of the State of Florida of December 17th, 1903, taken in connection with the other rates prescribed by said railroad commission, does not deprive respondent of its property without due process of law within the inhibition of the Federal Constitution.

Sixth. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the order of the railroad commission of the State of Florida of December 17th, 1903, taken in connection with the other rates prescribed by said railroad commission, does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibition of the Federal Constitution.

Seventh. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the said order of the railroad commission of the State of Florida of December 17th, 1903, was not unreasonable, and that said rate taken in connection with the other rates prescribed by said railroad commission does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibition of the Federal Constitution.

75 Eighth. The court erred in each and every of its orders and judgments rendered in the above cause.

Wherefore respondent prays that said errors may be cured, and the judgment of the said supreme court of the State of Florida be reversed and held for naught.

GEO. P. RANEY,
Attorney for Petitioner.

75½ [Endorsed:] Filed Nov. 2 1904 B. B. Wilson, clerk supreme court.

76 And afterwards, to-wit: on the 29th day of November, A. D. 1904, the plaintiff in error, by its attorney, filed in the supreme court of Florida its petition for an order extending the time for filing the record in the Supreme Court of the United States, which petition is in the words and figures as follows, to-wit:

Supreme Court of the State of Florida.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,
vs.
SEABOARD AIR LINE RAILWAY, a Corporation.
No. 2.

To the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida:

The petition of The Seaboard Air Line Railway, defendant above named, respectfully shows that owing to the pressure of other business requiring the attention of Mr. Geo. P. Raney, its division counsel for the State of Florida, who has had the above cause in charge, and the consequent inability of such counsel to give the necessary attention to the making up of the record in the above case, the same has not been made up and can not be made up in time to be filed on the return day of the writ of error in the above case, and therefore your petitioner prays that your honor will grant additional time for the making up and filing of said record in the Supreme Court of the United States, and, as in duty bound, your petitioner will ever pray.

77

SEABOARD AIR LINE RAILWAY,
By GEO. P. RANEY, Division Counsel.

STATE OF FLORIDA,
Leon County.

Geo. P. Raney being duly sworn deposes and says that the statements made in the above petition are true.

GEO. P. RANEY.

Sworn to and subscribed before me this 28th day of November, 1904.

B. F. WILLIS,
Notary Public.

And thereafter on the same day, the 29th day of November, A. D. 1904, and order was made by the chief-justice extending the time for filing the record, which order is in the words and figures as follows, to-wit:

In the Supreme Court of the State of Florida.

THE STATE OF FLORIDA *ex Rel.* W. H. ELLIS, as Attorney General of said State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne, John L. Morgan, and R. Hudson Burr, Railroad Commissioners of said State,
vs.
THE SEABOARD AIR LINE RAILWAY, a Corporation. } No. 2.

78 This day came The Seaboard Air Line Railway, respondent, by George P. Raney, Esq., its attorney, and made application for an order extending the time for the filing of the record in this case as above, and cause being shown therefor, such application is granted and the time for filing said record on the part of the respondent is extended until, to-wit, the ninth day of January, 1905.

Done and ordered this 29th day of November, 1904.

R. F. TAYLOR,
Chief-Justice of the Supreme Court
of the State of Florida.

79 And during the same term of the supreme court of Florida, and on the 23rd day of December, in the year of our Lord one thousand nine hundred and four, the said defendant made up and tendered its bill of exceptions which were settled and signed by the chief-justice of said court and ordered to be made a part of the record, which said bill of exceptions is in the words and figures as follows, to-wit:

80 In the Supreme Court of the State of Florida, June Term, 1904.

THE STATE OF FLORIDA on the Relation of W. H. ELLIS, as Attorney General, and J. M. Barrs, as Special Counsel for the Railroad Commissioners, of the State of Florida,
vs.
SEABOARD AIR LINE RAILWAY. } No. 2.

Be it remembered, that on the 12th day of October, in the year of our Lord one thousand nine hundred and four, at a term of the supreme court of the State of Florida, beginning and holden at Tallahassee, in the State of Florida, before Honorable R. Fenwick Taylor, chief-justice of said court, and the Honorables Francis B. Carter, Thomas M. Shackleford, William A. Hocker, Robert S. Cockrell, and James B. Whitfield associate judges of said court, the issue joined in the above stated cause between the said parties (upon the pleadings) came on to be tried before the said chief justice and said associate justices, and upon the trial of that issue The Seaboard Air Line Railway, respondent, pursuant to the statute in such cases made and provided, to maintain

and prove the issue on its part, then and there offered in evidence the report of the said Seaboard Air Line railway to the railroad commission of the State of Florida for the year ending June 30th, 1904, and the same on being so offered was filed in evidence and is in the words and figures following, to-wit:

(Here follows Exhibit A, marked pp. 81, 91, 93, 95, 100, 101, 103, 104, 105, 107, 109, 111, 113, 114, 115, 117, 119, 121, 123, 125, 127, 129, 130, 140, 142, 144, 148, 150, 152, 154, 156, 162, 164, 178 and 180.)

U. S. DEPARTMENT OF AGRICULTURE.

FARMERS' BULLETIN No. 22.

THE FEEDING OF FARM ANIMALS.

[REVISED EDITION.]

BY

E. W. ALLEN, Ph. D.,
Assistant Director of the Office of Experiment Stations.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1901.

LETTER OF TRANSMITTAL.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF EXPERIMENT STATIONS,
Washington, D. C., October 19, 1901.

SIR: I have the honor to transmit herewith revised copy for Farmers' Bulletin No. 22, on the Feeding of Farm Animals, prepared under my direction by E. W. Allen, Ph. D., assistant director of this Office. In this article the attempt has been made to make a clear and concise explanation of the principles on which the successful feeding of farm animals is based. These principles have been established by feeding experiments and other investigations at experiment stations and similar institutions in Europe and America, combined with observations of the practice of successful feeders. The present bulletin has been confined to a statement of the general principles of feeding, with the expectation that hereafter it may be possible to discuss the application of these principles to different kinds of farm animals in other publications of this series.

In this second revision of the bulletin certain changes have been made on the basis of more recent information.

Respectfully,

A. C. TRUE,
Director.

Hon. JAMES WILSON,
Secretary of Agriculture.

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Copy 45 S.A.L.
No. 2

ANNUAL REPORT

OF THE

TO THE

Railroad Commissions

~~INTERSTATE COMMERCE COMMISSION~~

OF THE

State of Florida

~~UNITED STATES~~

FOR THE YEAR ENDING JUNE 30, 1904.

PROPERTY OPERATED—STATE OF ~~GEORGIA~~.

[FOR ROADS MAKING OPERATING REPORTS.]

NAME OF EVERY RAILROAD THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—PAGE 31.

IN GIVING ROADS BELOW, OBSERVE THE FOLLOWING CLASSIFICATION AND ORDER:

1. Railroad Line represented by Capital Stock:
   - A. Main Line.
   - B. Branches and Spurs. [See "Instructions," page 8.]
2. Proprietary Companies whose entire Capital Stock is Owned by this Company.
3. Line Operated under Lease for specified sum.
4. Line Operated under Contract, or where the Rent is contingent upon earnings or other considerations.
5. Line Operated under Trackage Rights.

NAME.	TERMINALS. FROM—	TERMINALS. TO—	MILES OF LINE FOR EACH ROAD NAMED.	MILES OF LINE FOR EACH CLASS OF ROADS NAMED.
A				
Seaboard Air Line Ry	Ga State Line	Jacksonville Fla	36.16	
	Jacksonville Fla	Chaires Junc	20.906	
	Fernandina	Cedar Key	155.70	
	Waldo	Tampa	155.44	
	Brighton	Monticello	4.38	
	Tallahassee	St Marks	20.95	
	Fernandina	Ogelvia Beach	.25	
	Archer	Gayly Bird	98.75	
	Wildwood	Lake Charm	7.016	
	Silver Spg Jct	Silver Springs	1.90	
	Camptonville	Camptonville	.207	
	Summerfield	Lake Weir	7.65	
	Starke	Wannee	56.44	774.81
B				
Seaboard Air Line Ry	Fla MR & Nav Junc	Boone	9.83	
	Gayly Bird	Spur	.60	
	Lake Griffin	"	.54	
	Camp	"	.17	
	Deen Cy	"	1.95	7.68

PROPERTY OPERATED.

[FOR ROADS MAKING OPERATING REPORTS.]

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3. Line Operated under Lease for specified sum.
4. Line Operated under Contract, or where the Rent is contingent upon earnings or other considerations.
5. Line Operated under Trackage Rights.

NAME.	TERMINALS. FROM—	TERMINALS. TO—	MILES OF LINE FOR EACH ROAD NAMED.	MILES OF LINE FOR EACH CLASS OF ROADS NAMED.
1 A				
Seaboard Air Line Ry	Portsmouth	Norlina	102.10	
	Weldon	Weldon	78.60	
	Raleigh	Raleigh	96.20	
	Wilmington	Hamlet	96.60	
	Monroe	Rutherfordton	66.63	
	Deep Junction	Deep Junction	76.10	
	Hamlet	Rockfish	8.10	
	Ellerbe	Ellerbe	18.28	
	Camden	Camden	5.90	
	Columbia	Columbia	32.66	
	Savannah	Savannah	19.85	
	Lyons	Montgomery	16.99	
	Savannah	Jacksonville	138.96	
	Jacksonville	Fernandina	29.06	
	Fernandina	Ocala	150.70	
	Waldo	Tampa	165.00	
	Henderson	Durham	41.60	
	Henderson	Oxford	4.51	
	Roxboro	Lynchburg	52.00	
	Broadnax	Danville	10.00	
	Monroe	Pittsboro	11.20	
	Ellerbe	Cheraw	4.70	
	Mine Junction	Kenansville	1.70	
	Laurinburg	Lumberton	10.33	
	Hamlet	Wilson	10.13	
	Columbus	Albany	83.00	
	Nashville	Ocilla	30.80	
	Savannah River	Southern Junction	2.08	
	Dryton	Monticello	4.38	
	Bellamine	St Marks	22.85	
	Fernandina	Amelia Beach	2.45	
	Archer	Early Bird	28.75	
	Wildwood	Lake Charm	7.16	
	Silver Springs	Silver Spring	1.90	
	Sumterville	Sumterville	2.07	
		Total carried forward,	2468.1	

PROPERTY OPERATED—CONTINUED.

[FOR ROADS MAKING OPERATING REPORTS.]

NAME.	TERMINALS. FROM—	TERMINALS. TO—	MILES OF LINE FOR EACH ROAD NAMED.	MILES OF LINE FOR EACH CLASS OF ROADS NAMED.
Total brought forward.			24.861	
Suwannee River Line Ry	Starke	Sanderson	56.44	
	Summerfield	Lake Weir	7.65	25.9270
Seaboard Air Line Ry	Peninsular Junc.	Peninsular Phosphate	2.54	
	Agric. Chemical Spur	Mine	2.83	
	Early Bird	Mine	.60	
	Jeff Griffin	Mine	.59	
	Camp	Spur	1.71	
	Duncan	One mile	1.95	
	Belt Junction	Mineral Park	5.00	15.22
Central of Georgia Ry	Lyons	Meldrim	57.65	57.65
Wilmington Ry & Bdg. Co.	Kirkland	Navassa	2.40	2.40
Western & Atlantic Ry	Howells	Atlanta	3.00	3.00
Note. The above does not include 2.00 miles of line from Fernandina to Amelia Beach leased & 33 miles Leased. Von Hurley Creek Spur to Drewry				
		Total Mileage Operated,		261.09

NAME OF ALL COAL, BRIDGE, CANAL, OR OTHER PROPERTIES, THE EARNINGS AND EXPENSES OF WHICH AFFECT THE GENERAL BALANCE SHEET—PAGES 49 AND 51.

NAME.	CHARACTER OF BUSINESS.	TITLE. [OWNED, LEASED, ETC.]	STATE OR TERRITORY.
	None		

EXPLANATORY REMARKS.

In addition to the outstanding Capital Stock of $62.500.00 as shown on page 17 there is outstanding in hands of the Public $98.559.63 par value of Proprietary Lines Stock which is being bought up as fast as possible and for the purpose of acquiring same we have put up a sum for a like amount Showing same on General Balance Sheet as reserve for acquiring outstanding Capital Stock of Proprietary Companies

CAPITAL STOCK.

DESCRIPTION.		NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF SHARES.	TOTAL PAR VALUE AUTHORIZED.	TOTAL AMOUNT ISSUED AND OUTSTANDING.	DIVIDENDS DECLARED DURING YEAR.	
						RATE.	AMOUNT.
Capital Stock:	Common,	375000	10000	3750000000	3750000000	None	None
	Preferred,	250000	10000	2500000000	2500000000		
	TOTAL,	625000	10000	6250000000	6250000000	None	None

MANNER OF PAYMENT FOR CAPITAL STOCK.		NUMBER OF SHARES ISSUED DURING YEAR.	CASH REALIZED ON AMOUNT ISSUED DURING YEAR.	TOTAL NUMBER SHARES ISSUED AND OUTSTANDING.	TOTAL CASH REALIZED.	REMARKS.
Issued for Cash:	Common,	None	None			
	Preferred,	"	"			
Issued for Construction:	Common,	None	None	2000	None	
	Preferred,	"	"			
Issued for Reorganization:	Common,					
	Preferred,					
Issued for Acquiring Securities of Proprietary Companies	Pref	None		250000	None	
	Com	"		373000	"	
	TOTAL,	None		625000	None	

FUNDED DEBT.

MORTGAGE BONDS, MISCELLANEOUS OBLIGATIONS, AND INCOME BONDS.

CLASS OF BOND OR OBLIGATION.	TIME.		AMOUNT OF AUTHORIZED ISSUE.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	CASH REALIZED ON AMOUNT ISSUED.	INTEREST.			
	DATE OF ISSUE.	WHEN DUE.					RATE.	WHEN PAYABLE.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.
Balt. 1st mtg	1900	1950	75000000 00	34275000 00	12775000 00	Carmack, State	4	A & O	511000 00	511000 00
" Balt. Jr. 10 Year	1901	1911	10000000 00	10000000 00	10000000 00	10000000 00	5	M & N	500000 00	500000 00
" " " 3 "	1904	1907	5000000 00	5000000 00	6000000 00	5000000 00	5	M & S	52083 33	
B & R 1st Mtg	1886	1926	2500 00000	2500000 00	2500000 00	2561188 12	5	J & J	125000 00	125000 00
" Registered	—	1916	690 00000	690000 00	285000 00	690000 00	6	J & W	17100 00	17100 00
R & J R. 1st Mtg	1887	1917	260 00000	260000 00	55000 00	260000 00	"	A & O	3300 00	3300 00
R & G. " "	1897	1947	1500 00000	1200 00000	1200 00000	1150980 00	5	J & J	60000 00	60000 00
A & N " "	1888	1928	248 00000	150 00000	100 00000	145264 52	6	M & N	6000 00	6000 00
R & A. 1st " "	1886	1926	100 00000	100 00000	100 00000	100 00000	"	J & J	6000 00	6000 00
Pass. Extn. "	1899	1949	300 00000	300 00000	300 00000	Carmack, State	4	"	12000 00	12000 00
J & R N. " "	1889	1929	536 00000	536 00000	536 00000	486260 00	5	"	26800 00	26800 00
G. & N. 1st Consol.	1895	1945	140 00000	61850000	57850000	Carmack, State	"	"	2385833 33	2385833 33
G. & N. Imp. Co.	1899	1945	100 00000	100 00000	100 00000	" "	"	J & D	5000 00	5000 00
J & P. 1st Mtg	1888	1918	300 00000	300 00000	300 00000	300 00000	"	J & J	15000 00	15000 00
J & P. L. G. Ext.	1890	1930	50 00000	4680000	4100000	4680000	"	"	20500 00	20500 00
J & P. 1st Con.	1893	1943	780 00000	437200 00	437200 00	279000 00	"	"	21860 00	21860 00
Iowa Bond & Mtg	1891	1941	210 00000	203300 00	203300 00	203300 00	"	A & O	10165 00	10165 00
TOTAL:										
Mortgage Bonds,			1179 58000 00	654 93000 00	430 75000 00	389 61027 64			1994 73333	1994 73333
Miscellaneous Obligations,			150 00000 00	150 00000 00	150 00000 00	150 00000 00			52083 33	500 00000
Income Bonds,										
GRAND TOTAL,			1329 58000 00	804 93000 00	580 75000 00	539 61027 64			2046 81666	2494 73333

EXPLANATORY REMARKS.

Table B

Note 1. These are receivers notes of A & M. Ry and we are unable to separate interest and principal.

Note 2. These are obligations on the bond plan with coupons attached drawing interest. The interest not being included in face of notes only the principal is taken into account, the interest being accrued each month. The outstanding or unearned amount of interest is not stated for the reason if shown in two columns, amount outstanding principal" and "amount outstanding interest" would not show the total outstanding June 30" 1904 of $3,444,344.89 as shown on page 73 and carried to Balance Sheet.

FUNDED DEBT—CONTINUED.
EQUIPMENT TRUST OBLIGATIONS.

A. GENERAL STATEMENT.

SERIES OR OTHER DESIGNATION.	DATE OF ISSUE.	TERM.	NUMBER OF PAYMENTS.	EQUIPMENT COVERED.	REMARKS.
Lease No 99	Nov 10 1902	7 Years	84	250 Box Cars	Box cars 4734 to 5232 Eau Rouge
Ohio Falls Car Mfg. Co	Oct 15 1902	"	84	20 Refg. "	May 1 to 20 Inc
Lease No 103	Oct 21 1902	"	84	200 Box "	" 17000 to 17199 Inc
D & L Series B	April 1st 1897	10 "	10	12 Locomotives	
" " C	" " 1896	" "	10	13 Frg. " 175 Box 100 Flats	
" " A	Oct " 1897	20 "	20	2 Switch " 150 Flats	Equipment held under lease
Blair & Co. " "A"	July " 1900	6 3/4 "	20	1000 Flats 700 Box 300 Work Box	until paid for in full
Kennedy & Co " "B"	Jan 29 1902	10 "	40	300 " 10 Bent Loco 500 "	
Guaranty & Co " "C"	April 2 1903	" "	40	10 Frg. Locos. 10 Pass " 10 Cabooses	
				41 Pass. 100 Cafe 700 Box 200 Refrigerator Cars	
				200 Gondola Coal 200 Work Box	
				50 Skeleton underframe box cars	500 Work Box 1904 1900 mo 500 580 Mar
Ry. Loco & Car Co. A	June 1 1904	1 "	90	10 Consol Engines 500 Work Box 6 Engines 700-709 incl	25001-25500 inc

B. STATEMENT OF AMOUNT.

SERIES OR OTHER DESIGNATION.	CASH PAID ON DELIVERY OF EQUIPMENT.	DEFERRED PAYMENTS—PRINCIPAL.		DEFERRED PAYMENTS—INTEREST.				RATE.
		ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	ORIGINAL AMOUNT.	AMOUNT OUTSTANDING.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	
Lease # 99	311764	14668750	2224908	2474250	54842	173160	173160	7 annual
Rhode Island Loco Works	None	2564484	"	(See Note 1 Page 20)	"	"	"	
Series A D & L Ry	"	2500000 00	"	" " 2 " "	"	"	"	6 Flats
Ohio Falls Car Mfg Co.	"	5720970	1543378	1217434	71261	111458	111458	
Lease # 103	336900	12480000	5885777	2387600	464623	342597	342597	
Burnham Williams & Co	3054375	18909108	"	1600983	"	19231	19231	"
Series B D & L Ry	"	1100 0000	1100000	(See Note 2 Page 20)	"	96256	96256	5%
" C " "	"	2500 0000	5000000	" " " "	"	343772	343772	"
" D " "	"	30000000	21000000	" " " "	"	1075000	1075000	"
Rich Loco & Mch. Works	1425000	12947400	"	1108900	"	31100	31100	6 Flats
" " "	2137500	19421136	"	1663088	"	62158	62158	"
Pitts Car & Loc Works	142200	8712732	"	654732	"	33576	33576	"
Blair & Co Series A	2708 0000	11509 0000	4509 0000	(See Note 2 Page 20)	"	262950 00	262950 00	5%
Kennedy & Co " B	1312 7200	5311293 00	5431 0000	" " " "	"	25 8675 00	25 8675 00	6%
Guaranty & Co " C	1848 0000	15993600 00	1435 0000	" " " "	"	601 8449	601 6449	"
Ry Loco & Car Co A	172 7500	6400 0000	6400 0000	" " " "	"	14222	"	5%
TOTAL,	9763 4529	638073880	34364 4063	11322787	590726	1366 3229	1352 1007	

Principal 34364 4063
Interest 590726
Total 3442 3471 89

RECAPITULATION OF FUNDED DEBT.

CLASS OF DEBT.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	INTEREST.	
			AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.
Mortgage Bonds—Page 19,	654930000 00	430750000 00	19947333 33	19947333
Miscellaneous Obligations—Page 19,	150000000 00	150000000 00	5520833 33	5000000
Income Bonds—Page 19,				
Equipment Trust Obligations—Page 21,	63807388 80	34423478 89	1366229 29	1352100
TOTAL,	868737388 80	615173478 89	26834495 95	26299433

RECEIVER'S CERTIFICATES.

DATE ISSUED.	AMOUNT ISSUED.	AMOUNT OUTSTANDING.	PRINCIPAL.		INTEREST.		
			AMOUNT PAID DURING YEAR.	AMOUNT FUNDED OR OTHERWISE DISPOSED OF.	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.	RATE.
			None				
TOTAL,							

CURRENT ASSETS AND LIABILITIES.

CASH AND CURRENT ASSETS AVAILABLE FOR PAYMENT OF CURRENT LIABILITIES.		CURRENT LIABILITIES ACCRUED TO AND INCLUDING JUNE 30, 1904.	
Cash,	13806943	Receiver's Certificates,	
Bills Receivable,	4564182	Loans and Bills Payable,	3854860
Due from Agents,	2570540	Audited Vouchers and Accounts,	14466847
Due from Solvent Companies and Individuals,	748231	Wages and Salaries,	4648592
Net Traffic Balances due from other Companies,	x x x x	Net Traffic Balances due to other Companies,	651930
Other Cash Assets [Excluding "Materials and Supplies"].[1]	1080199	Dividends not Called for,	✓
		Matured Interest Coupons Unpaid (Including Coupons due July 1).	8197300
		Rents due July 1,	✓
		Miscellaneous,	956173
TOTAL—CASH AND CURRENT ASSETS,	22780655	TOTAL—CURRENT LIABILITIES,	32778703
BALANCE—CURRENT LIABILITIES,	9998383	BALANCE—CASH ASSETS,	✓
TOTAL,	32778703	TOTAL,	32778703

[1] Materials and Supplies on hand, $6970100

[See General Balance Sheet—Page 49.]

RECAPITULATION.

A. FOR MILEAGE OWNED BY ROAD MAKING THIS REPORT.

ACCOUNT.	TOTAL AMOUNT OUTSTANDING.	APPORTIONMENT.		AMOUNT PER MILE OF LINE.		REMARKS.
		TO RAILROADS.	TO OTHER PROPERTIES. [Page 11.]	MILES.	AMOUNT.	
Capital Stock—Page 17,	6250000000	6250000000	None	255425	2446902	
Bonds—Page 19 ["Grand Total"],	5807500000	5807500000	"	255425	2273661	
Equipment Trust Obligations—Page 21,	644234789	644234789	"	255425	13476	
TOTAL,	12401734789	12401734789	"	255425	4855837	

B. FOR MILEAGE OPERATED BY ROAD MAKING THIS REPORT (TRACKAGE RIGHTS EXCLUDED), THE OPERATIONS OF WHICH ARE INCLUDED IN THE INCOME ACCOUNT—PAGE 31.

NAME OF ROAD.	CAPITAL STOCK.	FUNDED DEBT.	TOTAL.	AMOUNT PER MILE OF LINE.	
				MILES.	AMOUNT.
Seaboard Air Line Ry	6250000000	6151734789	12401734789	260797	4755321
GRAND TOTAL,	6250000000	6151734789	12401734789	260797	4755321

COST OF ROAD, EQUIPMENT, AND PERMANENT IMPROVEMENTS.

ITEM.	EXPENDITURES DURING YEAR.			TOTAL COST TO JUNE 30, 1903.	TOTAL COST TO JUNE 30, 1904.	COST PER MILE.
	INCLUDED IN OPERATING EXPENSES.	NOT INCLUDED IN OPERATING EXPENSES.				
		CHARGED TO INCOME ACCOUNT AS PERMANENT IMPROVEMENTS.	CHARGED TO CONSTRUCTION OR EQUIPMENT.			
CONSTRUCTION:						
1. Engineering,			34876	654065	688941	270
2. Right of Way and Station Grounds,			1416925	20638810	34802035	13625
3. Real Estate,			1009567	8072825	9082392	3556
4. Grading,			3853796	30245356	34099152	13350
5. ~~Tunnels~~, Bonds of Depositary Acq. Sold					58000000	22707
6. Bridges, Trestles, and Culverts,			2240717	10870987	13111704	5133
7. Ties,			1745997	6608121	8354118	3270
8. Rails,			8666224	30675771	39341995	15403
9. Track Fastenings,			3637920	8406099	12044019	4715
10. Frogs and Switches,			1040971	3992188	5033159	1970
11. Ballast,			6784059	16077879	22861938	8951
12. Track Laying and Surfacing,			1648212	10101795	11750007	4600
13. Fencing Right of Way,			176606	839931	1016537	398
14. Crossings, Cattle Guards, and Signs,			1634205	1946225	3580430	1402
15. Interlocking or Signal Apparatus,			34804	675492	709796	278
16. Telegraph Lines,				139108	139108	54
17. Station Buildings and Fixtures,			6686633	32687090	39373723	15415
18. Shops, Roundhouses, and Turntables,			1162395	6062683	7225078	2829
19. Shop Machinery and Tools,			467122	5500881	10175003	3984
20. Water Stations,			93841	3355594	3949435	1546
21. Fuel Stations,			3111075	1751195	3862270	1512
22. Grain Elevators,			28800	34489	63289	25
23. Storage Warehouses,				1000587	1000587	392
24. Docks and Wharves,			3199913	9766748	12966661	5077
25. Electric-Light Plants,			90709		90709	36
Treasury Stock Issued to Amounts of $5000.000 bonds 26. ~~Electric-Motive-Power Plants~~,					1250000000	489380
27. ~~Car-Making Plants~~, Acquired by control of Stock			16556251	31028630877	3087297836	1208690
28. Miscellaneous Structures,			129449	7397089	7267640	2845
29. Legal Expenses,			35250	515738	550988	216
30. ~~Interest and Discount~~, Purchase of Contracts R.R.				853313	853313	334
31. General Expenses,			19190	1087414	1106604	433
TOTAL CONSTRUCTION,			49078407	33233200 60	46803984 67	1832396

COST OF ROAD, EQUIPMENT, AND PERMANENT IMPROVEMENTS—CONTINUED.

ITEM.	EXPENDITURES DURING YEAR.			TOTAL COST TO JUNE 30, 1903.	TOTAL COST TO JUNE 30, 1904.	COST PER MILE.
	INCLUDED IN OPERATING EXPENSES.	NOT INCLUDED IN OPERATING EXPENSES.				
		CHARGED TO INCOME ACCOUNT AS PERMANENT IMPROVEMENTS.	CHARGED TO CONSTRUCTION OR EQUIPMENT.			
EQUIPMENT:						
1. Locomotives,			469481 14	11782321 5	16477132 9	64509
2. Passenger Cars,			500753	19979614	18478859	7235
3. Sleeping, Parlor, and Dining Cars,						
4. Baggage, Express, and Postal Cars,				513637 3	513637 3	2010
5. Combination Cars,						
6. Freight Cars,			4565917 2	312520486	358179658	140229
7. Other Cars of all classes,			82715 2	5831174	6658326	2607
8. Floating Equipment,			100000	416974	316974	124
Acquired by contract of Assets) Destroyed Equipment to June 30th 1903.				22859192 2	22859192 2	89495
					3776945 3	14787
TOTAL EQUIPMENT,			9183368 3	690299758	744363988	291422
TOTAL CONSTRUCTION—PAGE 27,			4907840 7	3323320660	4680398467	1832396
GRAND TOTAL COST CONSTRUCTION, EQUIPMENT, ETC.,			1409120907	4018619818	5424762455	2123818
" " " " " State of Florida			42674101	1118466113	1161140214	1527173

QUESTION.	ANSWER.	REMARKS.
1. Does the absence of any entry under the heading "Included in Operating Expenses" (page 27 or 29) mean that no expenditures for permanent improvements or betterments have been charged to Operating Expense Accounts?	1. Yes	
2. Do the amounts entered under the heading "Included in Operating Expenses" (page 27 or 29) cover all expenditures for permanent improvements or betterments charged to Operating Expense Accounts?	2. None	

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EXPLANATORY REMARKS.

Other Deductions.				Deductions For Year			
Interest on Land Notes	4	92	81	Retirement Steps Fire Loss	126	47	30
Interest on Temporary Loans	113	088	97	Deferred Accounts.	66	925	75
Total Other Deductions	118	010	78	Chas. Aug. 2nd Shasta Air Line	56	449	15
				Destroyed Equipment	214	997	29
				Rail Shortage	30	485	99
				Obsolete Material	20	000	00
				Notes Accounts Receivable Not Collectible	34	278	45
				Losses on sale of Securities	22	069	00
				Reorganization Expenses-payments	79	905	96
				Reserve set up for Pacific Claims	58	076	45
				Sundry accounts	219	576	99
				Suspended Expenses & Commissions	115	975	00
				Reserve for contested litigation	100	000	00
				Total Deductions for Year	1144	320	53

INCOME ACCOUNT.

[FOR ROADS MAKING OPERATING REPORTS.]

Gross Earnings from Operation—Page 35,	12729567	
Less Operating Expenses—Page 45,	9092506	
INCOME FROM OPERATION,		3637054
DEFICIT,		
Dividends on Stocks Owned—Page 37,	304000	
Interest on Bonds Owned—Page 39,	101550	
Miscellaneous Income—less Expenses—Page 41,	10450	
INCOME FROM OTHER SOURCES,		416000
TOTAL INCOME,		3678654
DEFICIT,		
DEDUCTIONS FROM INCOME:		
Interest on Funded Debt Accrued—Page 23,	2683495	
Interest on Interest-bearing Current Liabilities Accrued, not otherwise provided for,		
Interest on Real Estate Mortgages,		
Rents Paid for Lease of Road—Page 47, A,	48930	
Taxes—Page 79, A,	530974	
Permanent Improvements—Page 29,		
Other Deductions,	118078	
TOTAL DEDUCTIONS FROM INCOME,		3381962
NET INCOME,		2946946
DEFICIT,		
Dividends, per cent, Common Stock—Page 17,		
Dividends, per cent, Preferred Stock—Page 17,		
Other Payments from Net Income,		
TOTAL,		
Surplus from Operations of Year ending June 30, 1904,		2946946
Deficit from Operations of Year ending June 30, 1904,		
Surplus on June 30, 1903, [From "General Balance Sheet," 1903 Report.]		16474874
Deficit on June 30, 1903, [From "General Balance Sheet," 1903 Report.]		
Additions for Year,		
Deductions for Year,		1144230
SURPLUS ON JUNE 30, 1904, [For entry on "General Balance Sheet," Page 51.]		7977551
DEFICIT ON JUNE 30, 1904, [For entry on "General Balance Sheet," Page 49.]		

INCOME ACCOUNT.

[FOR ROADS NOT MAKING OPERATING REPORTS.]

INCOME FROM LEASE OF ROAD,		
Dividends on Stocks Owned—Page 37,	None	
Interest on Bonds Owned—Page 39,		
Miscellaneous Income—less Expenses—Page 41,		
INCOME FROM OTHER SOURCES,		
TOTAL INCOME,		
DEFICIT,		
DEDUCTIONS FROM INCOME:		
Salaries and Maintenance of Organization,	None	
Interest on Funded Debt Accrued—Page 23,		
Interest on Interest-bearing Current Liabilities Accrued, not otherwise provided for,		
Interest on Real Estate Mortgages,		
Rents Paid for Lease of Road—Page 47, A,		
Taxes—Page 79, A,		
Permanent Improvements—Page 29,		
Other Deductions,		
TOTAL DEDUCTIONS FROM INCOME,		
NET INCOME,		
DEFICIT,		
Dividends, per cent, Common Stock—Page 17,	None	
Dividends, per cent, Preferred Stock—Page 17,		
Other Payments from Net Income,		
TOTAL,		
Surplus from Operations of Year ending June 30, 1904,	None	
Deficit from Operations of Year ending June 30, 1904,		
Surplus on June 30, 1903, [From "General Balance Sheet," 1903 Report.]		
Deficit on June 30, 1903, [From "General Balance Sheet," 1903 Report.]		
Additions for Year,		
Deductions for Year,		
SURPLUS ON JUNE 30, 1904, [For entry on "General Balance Sheet," Page 51.]		
DEFICIT ON JUNE 30, 1904, [For entry on "General Balance Sheet," Page 49.]		

ITEM.	TOTAL RECEIPTS.	DEDUCTIONS, ACCOUNT OF REPAYMENTS, ETC.	ACTUAL EARNINGS.
PASSENGER:			
Passenger Revenue,	6878819		
Less Repayments—			
Tickets Redeemed,		240225	
Excess Fares Refunded,		55395	
Other repayments,		387849	
Total Deductions,		683469	
TOTAL PASSENGER REVENUE,			6811350 44
Mail,			682603 8
Express,			808684
Extra Baggage and Storage,	76201 8		76201 8
Other items,	14450		14450
TOTAL PASSENGER EARNINGS,			8392293 4
FREIGHT:			
Freight Revenue,	192005146		
Less Repayments—			
Overcharge to Shippers,		9107486	
Other repayments,		895702	
Total Deductions,		10003188	
TOTAL FREIGHT REVENUE,			182001958
Stock Yards,			
Elevators,			1407122 8
Other items,			
TOTAL FREIGHT EARNINGS,			1960731 86
TOTAL PASSENGER AND FREIGHT EARNINGS,			2789961 20
OTHER EARNINGS FROM OPERATION:			
Switching Charges—Balance,			
Car Per Diem and Mileage—Balance,	142560		
Hire of Equipment—Balance,			
Telegraph and Telephone Companies,			
Rents from Tracks, Yards, and Terminals—Page 41,			
Rents not otherwise provided for,			
Other sources,	454187		
TOTAL OTHER EARNINGS,			4689 87
Total Less Earnings from Operation in Florida			2846 80 507
TOTAL GROSS EARNINGS FROM OPERATION, Entire Line			11954 1209

STOCKS OWNED.

A. RAILWAY STOCKS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR DIVIDEND RECEIVED.	VALUATION.
[illegible] Ry Common	15000000			15000000
[illegible] RR 2nd Preferred	11000000			11000000
" " Common	11442000			
" " Leased	2000000			
" " 2nd Preferred	4420000			
[illegible] RR Common	5715000			
[illegible] " "	1491000			
[illegible] " "	2901000			
[illegible] " "	8971000			
[illegible] " "	1487000			
" " " Preferred	4465000			
" " " Scrip	78953			
[illegible] & O R " Common	11068000			6270895974
[illegible] " " Preferred	5000000			
[illegible] " " Common	10000000			
[illegible] & K Belt "	500000			
Palmetto R R "	2000000			
[illegible] & Augusta "	2000000			
[illegible] "	434000			
[illegible] & O "	1991950			
[illegible] & A Ry Preferred	4494200			
" " " Common	3867300			
Augusta & Knoxville Line Preferred	2650000			
Ala & B. R. R. Ry Common	57000			
	1525000			
Rich & Walk Pot Line	4450000	4%	178000	4450000
W & A R R & S.S. Co Common	3800000			25328378
Ga. Newb & Sav. "	833500			100000
Spartanburg Ry Co.	200000			100
South Bound Common	2093000			2246579
Air Line (A. & C. Belt)	680000			680000
TOTAL,	46028189[illegible]		1780000	65269144[illegible]

B. OTHER STOCKS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR DIVIDEND RECEIVED.	VALUATION.
Baltimore Steam Packet Co.	4000000			8002295
Savannah Union Station Co.	1000000			1668896
Ga. Fla. Ngt. & Bat. Nav. Co.	80000			807644
Georgia Construction Co.	250000			2867833
Old Dominion S.S. Co.	21000000	6%	1260000	24875000
Atlantic Compress Co.	1250000			1250000
Jacksonville Terminal Co.	5000000			4692997
Seaboard Investment Co.	6250000			13220625
TOTAL,	86800000		1260000	191203850
GRAND TOTAL—A AND B,	468961893[illegible]		3040000	665814285

[illegible] 121

BONDS OWNED.

A. RAILWAY BONDS.

NAME.		TOTAL PAR VALUE.	RATE.	INCOME OR INTEREST RECEIVED.	VALUATION.
Fla. West Shore Ry		$3950000		98750	$3486571
Jessup & Roanoke	Reg 6's	4050000			4050000
A & J R RR	1st mtg	2050000			2050000
Durham & Nor	" "	500000			500000
Jax Brunt	" "	7250000			7250000
Cres & Kershaw	" "	5000000			5000000
Jax & Atl Ry	" Const.	2000000			2050000
J A & L Belt	" mtg	600000			510625
Incb. to A & B. & L.	" "	2750000			2778716
A & B. Exam & L.	2nd "	2000000			2000000
A & R R & T.	1st "	448000			xxxxx
Oxford & Coast Line	" "	250000			$2465986
J & L Ry Jax. Cal. Fr.	Scrip	8100			8100
TOTAL,		$58288100		98750	$52785864.23

B. OTHER BONDS.

NAME.	TOTAL PAR VALUE.	RATE.	INCOME OR INTEREST RECEIVED.	VALUATION.
Florida Publishing Co. 1/2 Interest in $ 14000.00 Bonds		6%	2800	8000
Fernandina Terminal Co.	5000000			5000000
TOTAL,	5000000		2800	5008000
GRAND TOTAL—A AND B,	$58788100		101550	$53293423

RENTALS RECEIVED.

RENTS RECEIVED FROM LEASE OF TRACKS, YARDS, AND TERMINALS.

DESIGNATION OF PROPERTY.	SITUATION OF PROPERTY LEASED.	NAME OF COMPANY USING PROPERTY LEASED.	ITEM.	TOTAL.
TRACKS:				
	Wilson to Jarvis	A & L RR	563808	
	Atlanta Ga	Atl Ry & C.	180000	
	Wilborn Fla	Fla Ry	24000	
	Archer to Marietta	A & L RR	432030	
	Tavares Fla	Tavares Gulf "	18000	
	Abraw to Mustang	Ben Sherman "	202500	
	Carthage NC	Carthage "	144000	
	Sidings & Spurs	Various	624560	
TOTAL,				2188278
YARDS:				
TOTAL,				
TERMINALS.	Coxdell Ga	Asso. & Non Ass	84500	
	Lumberton NC	Asso. Non "	9000	
TOTAL,				93500
		GRAND TOTAL RENTS RECEIVED, [For entry on page 35.]		2281778

MISCELLANEOUS INCOME.

ITEM.	GROSS INCOME	LESS EXPENSES.	NET MISCELLANEOUS INCOME.
Notes Bal Newels Laurens RR	104500		104500
TOTAL,	104500		104500

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ITEM.	AMOUNT.
MAINTENANCE OF WAY AND STRUCTURES:	
1. Repairs of Roadway,	844625.93
2. Renewals of Rails,	1095138.24
3. Renewals of Ties,	2804840.7
4. Repairs and Renewals of Bridges and Culverts,	860516.55
5. Repairs and Renewals of Fences, Road Crossings, Signs, and Cattle Guards,	1832840
6. Repairs and Renewals of Buildings and Fixtures,	1388000.51
7. Repairs and Renewals of Docks and Wharves,	254724.7
8. Repairs and Renewals of Telegraph,	397219.7
9. Stationery and Printing,	84438.25
10. Other Expenses,	664797
TOTAL,	16755755.51
MAINTENANCE OF EQUIPMENT:	
11. Superintendence,	552.706
12. Repairs and Renewals of Locomotives,	6614826
13. Repairs and Renewals of Passenger Cars,	2917722.9
14. Repairs and Renewals of Freight Cars,	5894534.56
15. Repairs and Renewals of Work Cars,	2086843
16. Repairs and Renewals of Marine Equipment,	728503
17. Repairs and Renewals of Shop Machinery and Tools,	642613
18. Stationery and Printing,	540697
19. Other Expenses,	719765
TOTAL,	17742097.97
CONDUCTING TRANSPORTATION:	
20. Superintendence,	2017694.7
21. Engine and Roundhouse Men,	7122[illegible]
22. Fuel for Locomotives,	19639673.5
23. Water Supply for Locomotives,	538263
24. Oil, Tallow, and Waste for Locomotives,	863072.7
25. Other Supplies for Locomotives,	175618.0
26. Train Service,	4048382.72
27. Train Supplies and Expenses,	1215636.6
28. Switchmen, Flagmen, and Watchmen,	2111917.7
29. Telegraph Expenses,	196021.08
30. Station Service,	6957845.2
31. Station Supplies,	5131819
32. Switching Charges—Balance,	
33. Car Per Diem and Mileage—Balance,	297.1441
34. Hire of Equipment—Balance,	
Total carried forward,	41059 [illegible]

OPERATING EXPENSES—CONTINUED.

ITEM.	AMOUNT.
CONDUCTING TRANSPORTATION—Continued.	
Total brought forward,	$10591490
35. Loss and Damage,	2978239
36. Injuries to Persons,	2517396
37. Clearing Wrecks,	1820083
38. Operating Marine Equipment,	3478523
39. Advertising,	6169942
40. Outside Agencies,	2270123
41. Commissions,	416982
42. Stock Yards and Elevators,	2818646
43. Rents for Tracks, Yards, and Terminals—Page 47, B,	5409276
44. Rents of Buildings and other Property,	1671889
45. Stationery and Printing,	7425789
46. Other Expenses,	298066
TOTAL,	$51188469.C
GENERAL EXPENSES:	
47. Salaries of General Officers,	1064972
48. Salaries of Clerks and Attendants,	1600196
49. General Office Expenses and Supplies,	1708997
50. Insurance,	848520
51. Law Expenses,	792338
52. Stationery and Printing (General Offices),	1623044
53. Other Expenses,	200996
TOTAL,	$5236963
RECAPITULATION OF EXPENSES:	
54. Maintenance of Way and Structures,	16757555
55. Maintenance of Equipment,	17742073
56. Conducting Transportation,	51188469
57. General Expenses,	5236963
GRAND TOTAL,	$92925661
PERCENTAGE OF OPERATING EXPENSES TO EARNINGS,	71.43

OPERATING EXPENSES—STATE OF ~~NORTH CAROLINA~~ Florida,

Maintenance of Way and Structures,	4975016
Maintenance of Equipment,	4181221
Conducting Transportation,	13864119
General Expenses,	1425134
TOTAL,	$2945126

RENTALS PAID.

A. RENTS PAID FOR LEASE OF ROAD.

NAME OF ROAD.	INTEREST ON BONDS GUARANTEED	DIVIDENDS ON STOCK GUARANTEED.	CASH.	TOTAL.
Central of Ga Ry			43500.00	43500.00
Wilmington Ry Bridge	542.50			542.50
TOTAL RENTS—A, [For entry on page 31 (or 32).]	542.50		43500.00	43925.00

B. RENTS PAID FOR LEASE OF TRACKS, YARDS, AND TERMINALS.

DESIGNATION OF PROPERTY.	SITUATION OF PROPERTY LEASED.	NAME OF COMPANY OWNING PROPERTY LEASED.	ITEM.	TOTAL.
TRACKS:				
Water Works Track	Montgomery Ala	Central of Ga Ry	139.48	
A & A RR	East Point Junction	A & A RR	156.00	
TOTAL,				295.48
YARDS:				
U Track	Lyons City Ala	A & A RR	207.38	
"	Gainesville "	G & G Ry	427.00	
Track to Lumber Co.	Durham NC	N & W "	5.00	
TOTAL,			709.38	709.38
TERMINALS: Freight Depot	Gleason Tenn	Nash & Nor Ry	105.00	
Pass Station	Cadenwood Ala	Geo. Sou. Co.	790.00	
Principal Facilities	Columbus Ga	C & G Ga RR Co	1946.15	
Yard & Ry Str.	Chattahoochee Fla	A & G Ga RR Co	1261.61	
" "	Alcorn Ga	Ga RR & Bkg Co	799.96	
Passenger Station	Montgomery Ala	L & N RR	1291.92	
" "	Savannah Ga	Savannah & Ga Ry	1232.45	
Columbus RR	Columbus "	Columbus RR	2076.50	
Terminals Facilities	Americus "	Ry Co of Ga	1225.00	
Wharves	Savannah "	Yard Co	125.00	
TOTAL,			11,999.96	12,999.96
		GRAND TOTAL RENTS—B, [For entry on page 45, item 45.]		54092.96

COMPARATIVE GENERAL BALANCE SHEET.

JUNE 30, 1903.		ASSETS.	JUNE 30, 1904.		YEAR ENDING JUNE 30, 1904.	
ITEM.	TOTAL.		ITEM.	TOTAL.	INCREASE.	DECREASE.
	$ 232320060	Cost of Road—Page 27,		4680398167	135707847	
	6902997 58	Cost of Equipment—Page 29,		744363998	5406423	
	786228948	Stocks Owned—Page 37,		666811825		120616563
	33612500	Bonds Owned—Page 39,		68293342 3	19680923	
		Other Permanent Investments,				
	10850000	Leasehold Interest in Wilmington Pocahontas & Pt. Smith		10850000		
		Lands Owned,				
	260288249	Cash and Current Assets—Page 23,		227800655		32487594
		OTHER ASSETS:				
		Equipment Trusts,		8127500 0	8127500 0	
	75263751	Materials and Supplies,		69701060		5561711
		Sinking Fund,				
	1893667	Sundries,		15700460	14206837	
		Profit and Loss—Page 31 (or 33),				
	1257537 3433	GRAND TOTAL,		1316244526 2	58707182 9	

COMPARATIVE GENERAL BALANCE SHEET—CONTINUED.

JUNE 30, 1903.		LIABILITIES.	JUNE 30, 1904.		YEAR ENDING JUNE 30, 1904.	
ITEM.	TOTAL.		ITEM.	TOTAL.	INCREASE.	DECREASE.
	62600000.00	Capital Stock—Page 17,		62500000.00		1
	05514770110	Funded Debt—Page 23,		61517347.89	6369467.79	
	03159215.79	Current Liabilities—Page 23,		03277890.38	1186545.59	
		Real Estate Mortgages,				
	2681658.7	Accrued Interest on Funded Debt not yet payable,		3163925.7	482267.0	
	1451832.0	Accrued Taxes not yet payable,		3210000.0	1758168.0	
	3061882.1	Reserve for acquiring outstanding Capital Stock of Baltimore City		985596.3		2076285.8
	1085000.0	Wilmington City Bridge Bonds		1085000.0	1	1
		Reserve Funds		05157.8773	05157.8773	
	917129.75	Sundries		2171442.90		2984495
	1647.8744	Profit and Loss—Page 31 (or 33),		799.51.52		849.3589
	125753.32433	GRAND TOTAL.		131624.52.63	5370718.29	

HR 1142

IMPORTANT CHANGES DURING THE YEAR.- State of Florida 53 70

Here present statements as follows: 1. All Extensions of Road put in Operation. 2. Decrease in Mileage by Line Abandoned or Line Straightened. 3. All other important Physical Changes. 4. All Leases taken or surrendered. 5. All Consolidations or Reorganizations effected. 6. All new Stocks issued. 7. All new Bonds issued. 8. All other important Financial Changes.

No 1 - 1.95 miles Turney Spur put in Operation
January 6th 1903
16.00 miles Alachua to Dunnellon put in operation
July 14th 1902

No 2 4.33 miles Turkey Creek Branch - Leased to Fla. West Shore RR
.77 " " " taken up - Spur
2.00 " " 38 M/P A & R/R. Turkey Creek Branch to Mines - taken up
2.00 " " of Amelia Beach Branch Leased to Steam Con Co

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SECURITY FOR FUNDED DEBT—PAGE 23.

CLASS OF BOND OR OBLIGATION.	WHAT ROAD MORTGAGED. FROM—	TO—	MILES.	AMOUNT OF MORTGAGE PER MILE OF LINE.	WHAT EQUIPMENT MORTGAGED.	WHAT INCOME MORTGAGED.	WHAT SECURITIES MORTGAGED.
1st Mtg. S.L.K.Ry 4% Bonds							
Ref. Col. Trust, 5 " "							
1st Mtg R.S.R 6 " "							
" " R.F.G 5 " "							
" " A.T.N 6 " "							
" " Ozark " " "	Main Line and Branches as returned on Page 4		255.25	2273662	Nil	None	Stocks and Bonds of Corporations.
" " C.C 4 " "							
" " Gen 5 " "							
" " S.W. Ext " " "							
" " F.C.P " " "							
" " " 2nd Ext " " "							
" " " Equal " " "							
" " S.W. Ext. " " "							
" " Low Bonds " " "							
Col. Trust 5% " " "							

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CLASS.	NUMBER.	TOTAL NUMBER OF DAYS WORKED.	TOTAL YEARLY COMPENSATION.	AVERAGE DAILY COMPENSATION.
General Officers,	7	2211	367416	1666
Other Officers,	9	3331	774030	246
General Office Clerks,	191	38510	7798231	202
Station Agents,	159	29682	4914309	166
Other Station Men,	189	100933	12085416	125
Enginemen,	120	29632	12999087	439
Firemen,	195	29632	4885757	165
Conductors,	86	20885	6195445	297
Other Trainmen,	233	49125	5658649	115
Machinists,	123	37485	7424269	270
Carpenters,	42	10126	2126821	210
Other Shopmen,	378	93057	14387933	155
Section Foremen,	126	47858	8455458	179
Other Trackmen,	1116	209479	19185289	92
Switch Tenders, Crossing Tenders, and Watchmen,	104	38889	5160204	133
Telegraph Operators and Dispatchers,	119	31501	5197877	165
Employees—account Floating Equipment,	6	2287	419359	183
All other Employees and Laborers,	742	96791	13865930	143
TOTAL (Including "General Officers"),	8369	868565	137850198	158
Less "General Officers,"	7	2211	367416	1662
TOTAL (Excluding "General Officers"),	8362	866354	137482782	155
DISTRIBUTION OF ABOVE:				
General Administration,	147	44057	1395423	317
Maintenance of Way and Structures,	1747	256807	27641746	108
Maintenance of Equipment,	5453	135648	8393903	176
Conducting Transportation,	1487	432308	7231206	167
TOTAL (Including "General Officers"),	8369	868565	137850198	158
Less "General Officers,"	7	2211	367416	1662
TOTAL (Excluding "General Officers"),	8362	866354	137482782	155
Total (Including General Officers) Entire Line	11678	3008771	475987738	158

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Florida

TRAFFIC AND MILEAGE STATISTICS—STATE OF ~~SOUTH CAROLINA~~.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, CAR MILEAGE, NUMBER CARS, ETC.	COLUMNS FOR REVENUE AND RATES.		
		DOLLARS.	CTS.	MILLS.
PASSENGER TRAFFIC:				
1. Number of passengers carried earning revenue,	625349			
2. Number of passengers carried one mile,	29 795251			
3. Number of passengers carried one mile per mile of road,	2451			
4. Average distance carried, miles,	4696			
5. Total passenger *revenue*—Page 35,		681053		
6. Average amount received from each passenger,			1 09	
7. Average receipts per passenger per mile,			02	286
8. Total passenger *earnings*—Page 35,		839220	34	
9. Passenger *earnings* per mile of road,		1113	05	
10. Passenger *earnings* per train mile,			70	424
FREIGHT TRAFFIC:				
11. Number of tons carried of freight earning revenue—Page 63,	1796027			
12. Number of tons carried one mile,	793 791199			
13. Number of tons carried one mile per mile of road,	896146			
14. Average distance haul of one ton, miles,	13433			
15. Total freight *revenue*—Page 35,		1820019	58	
16. Average amount received for each ton of freight,			1 01	236
17. Average receipts per ton per mile,			00	715
18. Total freight *earnings*—Page 35,		1960781	86	
19. Freight *earnings* per mile of road,		2600	47	
20. Freight *earnings* per train mile,			1	4475
TOTAL TRAFFIC:				
21. Gross earnings from operation—Page 35,		2846805	07	
22. Gross earnings from operation per mile of road,		3775	65	
23. Gross earnings from operation per train mile,			2	3090
24. Operating expenses—Page 45,		1987512	58	
25. Operating expenses per mile of road,		2636	08	
26. Operating expenses per train mile,			1	02695
27. Income from operation—Page 31,		859292	49	
28. Income from operation per mile of road,		1139	57	
CAR MILEAGE, ETC.:				
29. Mileage of passenger cars,	5364470			
30. Average number of passenger cars per train mile,	67			
31. Average number of passengers per train mile,	26			
32. Mileage of loaded freight cars—North or East,	8771885			
33. Mileage of loaded freight cars—South or West,	6732830			
34. Mileage of empty freight cars—North or East,	2509017			
35. Mileage of empty freight cars—South or West,	4633451			
36. Average number of freight cars per train mile,	17 10			
37. Average number of loaded cars per train mile,	11 72			
38. Average number of empty cars per train mile,	5 41			
39. Average number of tons of freight per train mile,	169 09			
40. Average number of tons of freight per loaded car mile,	14 40			
41. Average mileage operated during year,	2589 90			
TRAIN MILEAGE:	MILES.	MILES.		
42. Mileage of revenue passenger trains,	* * *	499705		
43. Mileage of locomotives employed in "helping" passenger trains,		* *		
44. Percentage of "helping" to revenue train mileage, per cent,	Annual Statement	* *		
45. Mileage of revenue mixed trains,	* * *	235427		
46. Mileage of revenue freight trains,	* * *	1185105		
47. Mileage of locomotives employed in "helping" mixed and freight trains,		* * *		
48. Percentage of "helping" to revenue train mileage, per cent,	Annual Statement	* * *		
49. TOTAL REVENUE TRAIN MILEAGE,	* * *	1920237		
50. Mileage of nonrevenue trains,	* * *	103338		

TRAFFIC AND MILEAGE STATISTICS.

ITEM.	COLUMN FOR NUMBER PASSENGERS, TONNAGE, CAR MILEAGE, NUMBER CARS, ETC.	COLUMNS FOR REVENUE AND RATES. Dollars.	Cts.	Mills.
PASSENGER TRAFFIC:				
1. Number of passengers carried earning revenue,	9400918			
2. Number of passengers carried one mile,	112464504			
3. Number of passengers carried one mile per mile of road,	93046			
4. Average distance carried,* miles,	11.96			
5. Total passenger *revenue*—Page 35.		2981600	00	
6. Average amount received from each passenger,†			31	7
7. Average receipts per passenger per mile,†			2	65
8. Total passenger *earnings*—Page 35.		2557161	64	
9. Passenger *earnings* per mile of road,*		1246	55	
10. Passenger *earnings* per train mile,†			78	90
FREIGHT TRAFFIC:				
11. Number of tons carried of freight earning revenue—Page 63.	5115785			
12. Number of tons carried one mile,	774491941			
13. Number of tons carried one mile per mile of road,	246630			
14. Average distance haul of one ton,* miles,	150.1			
15. Total freight *revenue*—Page 35.		9119782	82	
16. Average amount received for each ton of freight,†			178	02
17. Average receipts per ton per mile,†			1	17
18. Total freight *earnings*—Page 35.		9269139	72	
19. Freight *earnings* per mile of road,*		2951	47	
20. Freight *earnings* per train mile,†			19	340
TOTAL TRAFFIC:				
21. Gross earnings from operation—Page 35.		12720560	07	
22. Gross earnings from operation per mile of road,*		4051	41	
23. Gross earnings from operation per train mile,†			105	15
24. Operating expenses—Page 45.		9072506	61	
25. Operating expenses per mile of road,*		3451	42	
26. Operating expenses per train mile,†			71	27
27. Income from operation—Page 51.		3647054	26	
28. Income from operation per mile of road,*		1472	99	
CAR MILEAGE, ETC.:				
29. Mileage of passenger cars,	1865763			
30. Average number of passenger cars per train mile,*	4.70			
31. Average number of passengers per train mile,	29			
32. Mileage of loaded freight cars—North or East,	32552717			
33. Mileage of loaded freight cars—South or West,	32696204			
34. Mileage of empty freight cars—North or East,	7755002			
35. Mileage of empty freight cars—South or West,	17277859			
36. Average number of freight cars per train mile,*	17.29			
37. Average number of loaded cars per train mile,*	11.98			
38. Average number of empty cars per train mile,*	5.30			
39. Average number of tons of freight per train mile,†	164.06			
40. Average number of tons of freight per loaded car mile,*	13.06			
41. Average mileage operated during year,*	2610.97			
TRAIN MILEAGE:	MILES.	DOLLARS.		
42. Mileage of revenue passenger trains,		2461247		
43. Mileage of locomotives employed in "helping" passenger trains,	Cannot state			
44. Percentage of "helping" to revenue train mileage,* per cent,				
45. Mileage of revenue mixed trains,		658563		
46. Mileage of revenue freight trains,		11061104		
47. Mileage of locomotives employed in "helping" mixed and freight trains,	Cannot state			
48. Percentage of "helping" to revenue train mileage,* per cent,				
49. TOTAL REVENUE TRAIN MILEAGE,		13522351		
50. Mileage of nonrevenue trains,		2154650		

* Two (2) decimal figures required. † Five (5) decimal figures required.

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FREIGHT TRAFFIC MOVEMENT. – State of Florida

(COMPANY'S MATERIAL EXCLUDED.)

	COMMODITY.	FREIGHT ORIGINATING ON THIS ROAD.	FREIGHT RECEIVED FROM CONNECTING ROADS AND OTHER CARRIERS.	TOTAL FREIGHT TONNAGE.	
		WHOLE TONS.	WHOLE TONS.	WHOLE TONS.	PER CENT.
Products of Agriculture.	Grain,	7365	16046	23411	22
	Flour,	10485	10051	20536	19
	Other Mill Products,	6697	12535	19232	18
	Hay,	6582	11614	18196	17
	Tobacco,	630	165	795	01
	Cotton,	8598	3442	12040	11
	Fruit and Vegetables,	21670	16830	38500	36
	Melons	16626	512	17138	16
	Peanuts	374	079	453	00
Products of Animals.	Live Stock,	891	768	1659	02
	Dressed Meats,	50	963	1013	01
	Other Packing-House Products,	4060	6377	10437	10
	Poultry, Game, and Fish,	453	296	749	01
	Wool,	89	04	93	00
	Hides and Leather,	712	62	774	01
Products of Mines.	Anthracite Coal,	7208	1292	8500	08
	Bituminous Coal,	2096	9717	11813	11
	Coke,	830	726	1556	01
	Ores,		005	005	00
	Stone, Sand, and other like articles,	241056	26784	267840	253
	Gravel	66732	248371	315103	298
	Clay	4379	950	5329	00
Products of Forests.	Lumber,	339817	213354	553171	520
	Logs & Piles	67990	19643	87633	083
	Wood & Staves	25463	2416	27879	026
Manufactures.	Petroleum and other Oils,	7340	2794	9964	009
	Sugar,	1595	550	2145	002
	Naval Stores,	86448	38699	125147	118
	Iron, Pig and Bloom,	256	244	500	000
	Iron and Steel Rails,	946	1912	2858	003
	Other Castings and Machinery,	3042	4257	7299	007
	Bar and Sheet Metal,	7876	1635	9511	009
	Cement, Brick, and Lime,	31177	20131	51308	048
	Agricultural Implements,	77	165	242	000
	Wagons, Carriages, Tools, etc.,	796	497	1293	001
	Wine, Liquors, and Beers,	715	4930	5645	005
	Household Goods and Furniture,	1221	1042	2263	002
Merchandise,	Sundries	24998	12093	37091	035
	Cotton Factory Products	413	226	639	000
	Packing	30	189	219	000
		19913	15193	35106	033
Miscellaneous:	Other commodities not mentioned above,	26973	15695	42668	040
	Inter-Company - Florida Eastern Line	1096429	699598	1796027	1000
	TOTAL TONNAGE,	911089	1836447	4947336	10000

A. MILEAGE OF ROAD OPERATED (All Tracks).

LINE IN USE	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	290270	1522		5765	240	300	261097		5707	255090
Miles of second track,										
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,	37218			1757			38975	2227	9916	29059
TOTAL MILEAGE OPERATED (All Tracks).	290488	1522		7522	240	300	300072	2227	15623	284449

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Virginia	15750						15750			15750
North Carolina	62057	254			240		62551		2708	57843
South Carolina	34088						34088			34088
Georgia	58584	500		5765		300	65549			64849
Alabama	8160						8160			8160
Florida	74631	768					75399		2999	72400
TOTAL MILEAGE OPERATED (Single Track).	253270	1522		5765	240	300	261097		5707	255090

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (Single Track).

STATE OR TERRITORY.	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS.
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
Virginia	15750			15750			15750	
North Carolina	62057	254		62311		2708	57603	
South Carolina	34088			34088			34088	
Georgia	55084	500		57084			57084	
Alabama	8160			8160			8160	
Florida	74631	(+) 1201		75832		2999	72833	(+) Includes Turkey Creek Spur from Turkey Creek to Duval #33 Miles and 2 miles Amelia Beach Line which are L.S.S.
TOTAL MILEAGE OWNED (Single Track).	253470	1955		255425		5707	249718	

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MILEAGE—STATE OF ~~SOUTH CAROLINA~~ Florida

A. MILEAGE OF ROAD OPERATED (ALL TRACKS)

LINE IN USE	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
Miles of single track,	74631	768					75399	1195	3165	72234
Miles of second track,										
Miles of third track,										
Miles of fourth track,										
Miles of yard track and sidings,										
TOTAL MILEAGE OPERATED (ALL TRACKS),	74631	768					75399	1195	3165	72234

B. MILEAGE OF LINE OPERATED BY STATES AND TERRITORIES (SINGLE TRACK).

STATE OF ~~SOUTH CAROLINA~~ Florida	LINE REPRESENTED BY CAPITAL STOCK.		LINE OF PROPRIETARY COMPANIES.	LINE OPERATED UNDER LEASE.	LINE OPERATED UNDER CONTRACT, ETC.	LINE OPERATED UNDER TRACKAGE RIGHTS.	TOTAL MILEAGE OPERATED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.	
	MAIN LINE.	BRANCHES AND SPURS.							IRON.	STEEL.
	74631	768					75399	1195	3165	72234
TOTAL MILEAGE OPERATED (SINGLE TRACK),	74631	768					75399	1195	3165	72234

C. MILEAGE OF LINE OWNED BY STATES AND TERRITORIES (SINGLE TRACK.)

STATE OF ~~SOUTH CAROLINA~~ Florida	LINE REPRESENTED BY CAPITAL STOCK.			TOTAL MILEAGE OWNED.	NEW LINE CONSTRUCTED DURING YEAR.	RAILS.		REMARKS
	MAIN LINE.	BRANCHES AND SPURS.				IRON.	STEEL.	
	74831	1201		76032	1195	3165	72867	
TOTAL MILEAGE OWNED (SINGLE TRACK),	74831	1201		76032	1195	3165	72867	

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A. FOR REPORTING COMPANY'S OWNED AND PROPRIETARY LINES.

STATE OR TERRITORY.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
Virginia								2,622,165
North Car								109,410 39
South "								86,708 45
Georgia								104,231 17
Alabama								135,223 39
Florida								125,949 46
TOTAL,								4,241,952 70

B. FOR REPORTING COMPANY'S LEASED AND OPERATED LINES.

NAME OF ROAD.	AD VALOREM TAX.		SPECIFIC TAX.			ON PROPERTY OWNED, NOT USED IN OPERATION, AND MISCELLANEOUS.	INTERNAL REVENUE, U. S. GOVERNMENT.	TOTAL.
	On the Value of Real and Personal Property.	On the Value of Stocks or Bonds; or on Valuation based on Earnings, Dividends, or other Results of Operation.	On Stocks, Bonds, Loans, Etc.	On Gross or Net Earnings, Revenue, or Dividends.	On Traffic, or some Physical Quality of Property Operated, or on Privilege.			
		— None —						
TOTAL,								

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OATH.

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State of Virginia
City
County of Portsmouth } ss:

WE, THE UNDERSIGNED, J M Parr, President,
and T H Roby, Comptroller
of the Seaboard Air Line Railway Company,
on our oath do severally say that the foregoing return has been prepared, under our direction, from the original books, papers, and records of said Company; that we have carefully examined the same, and declare the same to be a complete and correct statement of the business and affairs of said Company in respect to each and every matter and thing therein set forth, to the best of our knowledge, information, and belief; and we further say that no deductions were made before stating the gross earnings or receipts herein set forth, except those shown in the foregoing accounts; and that the accounts and figures contained in the foregoing return embrace all of the financial operations of said Company during the period for which said return is made.

Signed J M Parr
President.
(Or other Chief Officer.)

Signed T H Roby ~~Treasurer.~~ Comptroller
(Or other Officer in charge of the Accounts.)

SUBSCRIBED AND SWORN TO before me
this ..... day of ....., 190 .

~~755~~ 180

186–189 And thereupon the said Seaboard Air Line railway to further maintain the issue in its behalf offered in evidence the report of the railroad commission of the State of Florida for the year ending March 1st, A. D. 1904, and the same was filed in evidence and is in the words and figures following, to-wit:

190–200 Report of the Railroad Commission

Office of the Railroad Commission.

STATE OF FLORIDA,
TALLAHASSEE, March 1, 1904.

To his excellency W. S. Jennings, governor of Florida.

SIR: The railroad commissioners of the State of Florida have the honor to submit to you herewith, in accordance with the requirements of the laws of Florida, their seventh annual report for the year ending March 1, 1904.

* * * * * * *

201 Joint Rates.

Probably one of the most important acts of the railroad commission during the year was the adoption of order No. 35, amending rule No. 19, governing joint rates.

Rule 19 of the rules and regulations, prescribed by the *the* commission for the transportation of freight, required that the maximum rate charged on shipments originating and terminating within this State which passed over the whole or parts of two or more roads not under the same control, should be the sum of the local rates for the distance hauled over each road.

While the commission could not see their way clear to order into operation a straight mileage rate for shipments passing over two or more roads, still they were of the opinion that the sum of the local rates was unreasonably high, and it was determined to take the matter up with the railroads with a view of making a reduction. A meeting of the commission was held at Jacksonville on November 17th, 1903, and the railroads were given an opportunity to show cause why rule 19 should not be amended to meet the views of the commission. The railroad companies were represented at this meeting by their traffic officials and protested against any reduction of joint rates, but especially requested that if the commission were determined to reduce these rates, that they except classes L, N, O and P, which classes the representatives of the roads contended were already very low.

After due consideration the commission decided to make this exception and issued their order, No. 35, amending rule 19, fixing the maximum rate on all freights, originating and terminating in this State, except classes L. N. O and P, which pass over the whole of

two or more roads, not under the same control, at the sum of the local rates, for the distance hauled, less ten per cent.

202–205 This reduction will amount to a large saving in freight charges to the people of the State.

* * * * * * *

206 "Cannot Prevent Advances.

"There is now no way in which these advances can be prevented. If they are just and reasonable they ought not to be prevented. In cases where the reasonableness of charges is fairly in doubt the benefit of that doubt should be given to the railways; but it is impossible to contemplate with indifference the fact that the results of all the recent improvements in transportation facilities is an increase in the transportation charge, or to remember with indifference that this species of property now possesses the power to tax unjustly every other species of property. If these charges are unreasonable, they are a most insidious means of taking unjustly from the general body of the public for the benefit of the few, and some means should be devised by which this can be prevented."

The foregoing from the Interstate Commerce Commission shows that the raising of interstate rates has been general over the whole United States, and not confined to Florida. There has been a very general raise of interstate rates in Florida, which the railroad commissioners have been unable to prevent. Local rates have not been raised, and in many instances during the past year have been materially reduced. The general raise in interstate rates, however, demonstrates that there would have been a raise in local rates if

207 Florida did not have a railroad commission to restrain and prevent it.

* * * * * * *

208 Merchandise Rates.

In our last annual report we stated in detail the steps that were taken by the commission in ordering into effect a reduction on merchandise rates, to be operated by the Seaboard Air Line and Atlantic Coast Line railroads. The commission's order required that this rate should become effective July 1, 1904. At the appointed time the railroads put the rate into operation.

This reduction affected a large part of all the freights hauled by the Seaboard Air Line and Atlantic Coast Line railroads in Florida. For distances of 150 miles and over 140 miles the reduction on such articles as shoes, books, medicines, not otherwise specified, and mowing machines was 10 cents per 100 pounds. On bedsteads and bureaus, 7 cents per 100 pounds; on corn mills and cane mills, hoes and plow handles, 3 cents per 100 pounds; on brick in less than carload quantities, 8 cents per 100 pounds, and on lumber in less than carload quantities, 4 cents per 100 pounds; on bacon and

hams packed in wood, 1 cent per 100 pounds. On corn and oats, 2 cents per 100 pounds; on flour, 4 cents per barrel; on household goods and live stock, $3.00 per carload.

The above is given to show how the reduction affects a few staple articles for a certain distance. The reduction is about the same for all distances between points on the lines of the above named railroads, and affects practically all articles in less than carload quantities, and a few in carload quantities.

The above figures show the difference between the rate formerly authorized by the railroad commission, and the one now prescribed by them for the Atlantic Coast Line and Seaboard Air Line railroads. Between some points in the State, the railroads prior to July 1, 1903, operated what are known as special rates; that is, rates less than those allowed by the commission, so that when railroads were required to put down their rates to those of the commission, at those points where the special rates were in force, the reduction was not as much as given above, and in a very
209–239 few instances the rate was actually raised. While the commission regret that it should have been necessary to raise the rate at any point, yet unless there was competition of some kind to justify it, the commission do not consider these special rates to have been just. The courts have decided that competition is a sufficient reason for a special rate, but where there is none, and where conditions are practically the same, the commission is of the opinion that rates between all points the same distance apart should be alike.

The reduction in merchandise rates, while it may seem small when considered in relation to any one article, yet when we consider that it affects every article of clothing, every article of household furniture and everything that we eat, it can readily be seen what a saving it will be in the aggregate to the people of Florida in the course of a year.

* * * * * * *

240 Order No. 35.

Railroad Commission, State of Florida.

Amendment of Rule 19, Governing Joint Rates.

Due notice having been given to all the railroads doing business wholly or in part within the State of Florida, that there would be a meeting of the railroad commissioners in the city of Jacksonville on the 17th day of November, A. D. 1903, for the purpose of considering the adoption of an amendment to rule 19, governing joint rates, at which time all railroad companies and common carriers would be given an opportunity to be heard and show cause, if any they had, why the proposed amendment should not be adopted.

At the request of the railroad companies the hearing was advanced to 2:30 p. m., November 16th, at the board of trade rooms in the

city of Jacksonville, at which time the railroads were given an opportunity to be heard, and the commissioners being satisfied that the proposed amendment was reasonable and just;

It is therefore ordered by the railroad commissioners of the State of Florida, that rule 19 of the rules and regulations of the Florida railroad commission, governing the transportation of freight is hereby amended to read as follows:

241–273 "On all shipments of freights except classes L, N, O, & P, not governed by rule No. 1, originating and terminating in this State, which shall pass over the whole or portions of two or more roads, not under the same control, the maximum rate charged on such shipments shall not be greater than the sum of the local rates on such freights less ten (10) per cent. for the distance hauled over each road. The total rate thus ascertained on such freights from the point of shipment to the point of destination, shall be divided in such proportions between the roads over which such freights pass, so as to give to each road interested in the shipment its local rate less ten (10) per cent. for the distance such shipment is hauled, conditioned upon the initial line delivering the traffic to the delivering road at its nearest junctional point.

On classes L, N, O. & P, the joint rate shall not exceed the sum of the local rates on such freight.

Nothing in this rule shall be construed to prevent the total of any joint rate made under this rule from being divided in such proportions between the roads interested in the same as they may agree upon, but a failure to so agree between the roads interested shall in no way affect the total joint rate to be charged and collected on or work delay in the transportation of such freight, or be subject of appeal to the commission by the roads at interest."

It is further ordered, that the amendment to rule 19 set out above be effective on all the railroads and common carriers doing business wholly or in part within the State of Florida on and after January 20th, 1903.

Done and ordered by the railroad commissioners of the State of Florida, in session at their office in the city of Tallahassee, Florida, this 22nd day of December, A. D. 1903.

(Signed) JEFFERSON B. BROWNE, Chairman.

Attest: R. C. DUNN, Secretary.

* * * * * * *

275 Gross Earnings from Operation of Railroads in Florida During the Twelve Months Ending June 30, 1903.

Railroads reporting.	Passenger train earnings.					Total freight earnings.	Total other earnings.	Total gross earnings from operations.
	Passenger revenue.	Mail revenue.	Express revenue.	Extra baggage, storage and other items.	Total passenger earnings.			
Atlantic Coast Line	$751,371 39	$143,590 05	$84,761 33	$7,173 81	$986,896 58	$2,246,-89 73	$98,680 85	$3,331,967 16
Alabama and Florida Div., L. & N.	43,813 16	3,750 63	1,559 28	1,026 14	49,940 21	143,965 16	713 18	194,618 55
Carrabelle, Tallahassee and Georgia	20,712 84	3,826 52	3,245 41	290 90	28,075 67	32,480 48	13,723 92	74,280 07
Florida East Coast	788,948 12	80,368 20	158,717 13		1,028,033 45	901,280 18	88,893 53	2,018,207 16
Gainesville and Gulf	10,545 02	1,813 24	6,510 17		18,868 53	39,004 51	480 00	58,352 94
Georgia, Florida & Alabama	9,356 42	759 05	305 86		10,421 31	15,095 91	297 76	25,815 00
Georgia Southern and Florida	90,782 6-	7,685 34	19,629 73	478 61	118,576 35	118,111 48	18,569 58	255,257 21
Jacksonville and Southwestern	10,126 93	1,50- 00		46 83	11,673 76	191,994 70	1,252 90	204,921 36
Live Oak and Gulf	908 60	757 44			1,756 04	11,570 76	1,396 76	14,723 56
Pensacola Div. of the L. & N.	97,660 05	4,644 60	9,1-5 03	1,939 03	113,359 71	393,790 19	29,363 87	536,513 77
Pensacola and Atlantic Div. L. & N.	145,667 23	13,956 05	9,189 10	3,380 -2	172,192 80	346,199 28	4,488 62	522,88- 70
Seaboard Air Line	681,033 44	68,260 38	80,868 84	9,066 68	8-,229 34	1,960,731 86	46,843 87	2,846,805 07
South Georgia	11,946 08	1,792 34	137 45		13,875 87	44,650 58	2,443 02	60,969 47
Suwannee and San Pedro	8,750 33	256 23	17 18		9,003 74	30,645 60		39,649 34
Tavares and Gulf	1,242 20	1,258 12	878 69		3,379 01	11,092 25		14,471 26
Valdosta Southern	5,958 -2	6-1 60			6,560 12	13,477 65		2-,037 77
Yellow River	10,538 37	698 82	133 93		11,371 12	76,140 45	1,568 23	89,0-9 80
St. Johns Terminal Co.						8,301 75	74,353 10	82,654 85
Totals	$2,689,4-1 37	$335,518 61	$374,870 13	$23,393 42	$3,423,213 53	$6,584,922 52	$383,068 99	$10,391,205 04

Railroads reporting.	Maintenance of ways and structures.	Maintenance of equipment.	Conducting transportation.	General expenses.	Total operating expenses.	Percentage of operating expenses to gross earnings.
Atlantic Coast Line	$490,299 39	$353,142 77	$1,013,414 89	$93,036 94	$1,949,893 99	58.52
Alabama & Florida Div. L. & N.	5,081 75	3,127 85	7,759 06	424 09	16,392 75	71.50
Carrabelle, Tallahassee and Georgia	15,640 24	12,627 41	25,330 38	10,364 26	63,962 29	86.11
Florida East Coast	344,830 13	193,578 90	732,809 23	80,374 52	1,351,592 78	66.97
Gainesville and Gulf	10,446 26	5,608 52	19,834 37	6,470 79	42,359 94	72.10
Georgia, Florida & Alabama	8,326 73	4,765 44	14,076 41	3,587 18	30,755 76	115.30
Georgia Southern and Florida	54,232 14	65,813 86	101,007 51	14,961 49	236,015 00	92.46
Jacksonville and Southwestern	33,711 50	25,870 80	67,091 57	11,472 25	138,146 12	67.41
Live Oak and Gulf	4,027 23	910 91	4,915 48	1,092 40	10,946 02	74.34
Pensacola Div. L. & N.	120,476 00	62,851 19	176,746 67	10,399 05	370,472 91	69.05
Pensacola and Atlantic Div. L. & N.	117,995 06	74,649 93	157,001 18	15,104 77	364,750 94	69.76
Seaboard Air Line	427,850 16	418,122 10	1,386,641 18	142,513 14	2,375,126 58	83.43
South Georgia	1,640 60	1,020 79	3,795 76	1,292 98	7,750 13	94.00
Suwannee & San Pedro	6,785 59	1,384 15	12,017 05	2,489 38	22,676 17	157.20
Tavares and Gulf	5,360 21	2,868 22	4,801 62	2,478 76	15,508 81	07.08
Valdosta Southern	2,689 59	436 15	4,338 29	2,994 58	10,458 61	52.22
Yellow River	25,891 70	9,838 14	42,869 28	3,931 76	82,530 88	92.75
*St. Johns Terminal Co	9,338 09	5,586 87	32,303 38	5,259 85	52,488 19	63.50
Totals	$1,684,622 37	$1,242,204 00	$3,806,753 31	$408,248 19	$7,141,827 87	

*From Nov. 1st, 1902 to June 30, 1903.

Names of railroads.	Miles of main track.	Miles of yard track and siding.	Miles of branches and spurs.	Total mileage operated.
Atlantic Coast Line	896.58	159.07	332.53	1,388.18
Alabama & Florida	11.83	1.07	.....	12.90
Carrabelle, Tallahassee and Georgia	50.00	3.58	.....	53.58
Florida East Coast	484.95	53.94	.....	538.89
Gainesville and Gulf	48.00	2.00	.....	50.00
Georgia, Florida and Alabama	23.59	1.13	.....	24.72
Georgia Southern and Florida	152.36	17.02	.....	169.38
Jacksonville and Southwestern	85.60	6.00	.....	91.60
Live Oak and Gulf	18.00	.....	2.00	20.00
Pensacola Div. of the L. & N	46.77	29.18	.....	75.95
Pensacola and Andalusia	20.00	1.00	.....	21.00
Pensacola and Atlantic Div. L. & N	160.47	10.03	.....	170.50
Pensacola, Alabama and Tennessee	23.30	2.35	.....	25.65
Seaboard Air Line	746.31	.....	7.68	753.99
South Georgia	12.41	.....	.....	12.41
Suwannee & San Pedro	43.00	.....	.....	43.00
St. Johns Terminal Co	6.39	10.97	.....	17.36
Tallahassee Southeastern	20.00	.....	.....	20.00
Tavares and Gulf	31.64	1.38	.....	33.02
Valdosta Southern	13.00	.....	.....	13.00
Yellow River railroad	25.90	.....	.....	25.90
Total	2,929.10	298.72	342.21	3,561.03

278 And thereupon the said Seaboard Air Line railway announced that it had no further testimony to introduce in the cause, and the State of Florida upon the relation aforesaid, announced that it had no testimony to introduce.

And inasmuch as the said several matters objected to or insisted upon and considered by the court do not appear by the record, the said respondent did, on the 23rd day of December, 1904, during said term, propose this its bill of exceptions, to the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, and request him to sign the same, which is done this 23rd day of December, 1904.

[Seal of the Supreme Court of Florida.]

R. F. TAYLOR, [SEAL.]
Chief-Justice of the Supreme Court
of the State of Florida.

279 I, B. B. Wilson, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing pages numbered from one to two hundred and seventy-eight (278) inclusive constitute a true copy of all of the proceedings, of all orders made and of all opinions filed by the supreme court of Florida, and a correct transcript of the record of the judgments rendered by the said supreme court of Florida in the case of The State of Florida *ex rel.* W. H. Ellis as attorney general of said State and J. M. Barrs as special counsel for the railroad commissioners of the State of Florida, vs. Seaboard Air Line Railway, a corporation under the laws of Virginia and North Carolina, as appear upon the files and records of my office; also the original writ of error from the Supreme Court of the United States to the supreme court of Florida in this cause, and the original citation to the defendant in error and acceptances of service thereof, and the original assignment of errors in the Supreme Court of the United States on said writ of error.

Which said transcript, annexed hereto, together with said original writ of error, original citation and original assignment of errors, I hereby certify as and for my full return to said writ of error.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of Florida, at Tallahassee, the capital, this 29th day of December, A. D. 1904.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

280 Supreme Court of the United States, October Term, 1905.

SEABOARD AIR LINE RAILWAY, a Corporation under the Laws of the States of Virginia and North Carolina, Plaintiff in Error, vs. THE STATE OF FLORIDA *ex rel.* W. H. ELLIS, as Attorney-General, *et al.*, Defendants in Error.	No. 156, October Term, 1905.

In pursuance of the rules and practice of this court, it is hereby stipulated by and between counsel of record in this case, that all of the record in the above cause shall be printed except the portions thereof as to which it is hereinafter stipulated that there shall be no printing, to-wit:

First. The petition for the alternative writ of mandamus shall not be printed.

Second. None of the report of the Seaboard Air Line railway to the railroad commission of the State of Florida for the year ending June 30th, 1904, and to be found in the bill of exceptions, shall be printed except the following parts thereof, to-wit:

Print pages 1, 9A, 9, 11, page 17 and explanatory remarks to be found on page 16, and to follow page 17 immediately, page 19, page 21 and explanatory remarks on page 20, to follow page 21 immediately, pages 23, 25, 27, 29, 31 and explanatory remarks on page 30, to follow page 31 immediately, pages 33, 35, and 37 and explanatory remarks on page 36 to follow page 37 immediately, page 39 and explanatory remarks on page 38 to follow page 39 immediately, pages 41, 43, 45, 47, 49, 51, 53, 57, 59, 61A, 61, 63, 67, 67B, 79 and 81.

Third. None of the report of the railroad commission of the State of Florida for the year ending March 1st, A. D. 1904, to be found in the bill of exceptions in said cause, shall be printed, except that the following parts thereof shall be printed, to-wit:

All of page 5, down to but excluding the heading "Complaints." All of pages 16 and 17, beginning with the heading "Joint rates" on page 16, and ending with the word "State," at the end of
281 the second line on page 17. That part of pages 21 and 22, commencing with the heading "Can not prevent advances," on page 21, and ending with the word "it," at the end of the first line on page 22. All of page 23, commencing with the words "Merchandise rates," and all of page 24, down to and including the word "year," at the end of the second paragraph on said page 24. All of pages 56 and 57, commencing with the heading "Order No. 35," on page 56, down to the end of page 57. The three tables of statistics,

including such heading, to be found at the end of such report under the heading "Statistics."

GEO. P. RANEY,
Attorney for Plaintiff in Error.
W. H. ELLIS,
Attorney-General,
J. M. BARRS,
Special Counsel,
Attorneys for Defendants in Error.

Nov. 14th, 1905.

282 [Endorsed:] File No. 19592. Supreme court U. S. October term, 1905. Term No. 156. Seaboard Air Line Railway, P. E. vs. The State of Fla. *ex Rel.* W. H. Ellis att'y gen'l, *et al.* Stipulation to omit parts of record in printing. Filed Nov. 20, 1905.

Endorsed on cover: File No. 19,592. Florida supreme court. Term No. 156. Seaboard Air Line Railway, plaintiff in error, vs. The State of Florida upon the relation of W. H. Ellis, as attorney general of said State, *et al.* Filed January 6th, 1905. File No. 19,592.

FILE COPY.

Office Supreme Court U. S.
FILED
FEB 23 1906
JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1905.

No. [redacted]9

ATLANTIC COAST LINE RAILROAD CO.,
Plaintiff in Error,

vs.

THE STATE OF FLORIDA, Etc.,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN E. HARTRIDGE,

Attorney for Plaintiff in Error.

The Floridian

IN THE SUPREME COURT OF THE UNITED STATES.

ATLANTIC COAST LINE RAILROAD COMPANY,

Plaintiff in Error,

vs.

STATE OF FLORIDA UPON THE RELATION OF W. H. ELLIS, AS ATTORNEY-GENERAL OF SAID STATE, AND J. M. BARRS, AS SPECIAL COUNSEL FOR THE RAILROAD COMMISSIONERS OF SAID STATE.

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

On January fifteenth, 1904, the Railroad Commissioners of the State of Florida, after a hearing had, at which the Defendant in Error was represented, made the following order:

It is further ordered by the railroad commissioners of the State of Florida, that the rate to be charged by all the railroads and common carriers doing business wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile.

Provided, however, that where the rate of one cent per ton per mile will raise any rate now in operation, that said rate of one cent per ton per mile shall not be effective, but the rate as now charged by the railroad companies is hereby adopted by the railroad commissioners as their rate between such points.

It is therefore ordered, that where a shipment of phosephate shall pass over two or more railroads in reaching its destination within the State of Florida, the initial line may charge one and a half cents per ton per mile for the first ten miles which said phosphate shall be hauled.

It is further ordered, that where phosphate from points in Florida passes over two or more roads in reaching its destination within the State of Florida, that the provisions of rule 19, governing joint rates is hereby modified, so that the initial road shall have the right to deliver the shipment to the delivering road at such junctional point within the State of Florida as it may desire.

Provided, however, that the rate charged for such shipment shall be based upon the shortest mileage between the point of shipment and the place of destination.

On March eighth, thereafter, he Defendant in Error, by its Attorneys, presented and filed in the Supreme Court of the State of Florida, its petition and motion for a mandamus against the Plaintiff in Error, reciting the proceedings of the Railroad Commission and its order, and alleged that the Plaintiff in Error had refused to comply with the order of the Railroad Commission.

On March twelfth, 1904, an alernative writ of mandamus was issued on the petition and motion before referred to, citing the Plaintiff in Error to show cause, on March twenty-ninth, 1904, why it refused to obey the order of the Railroad Commission.

On March twenty-ninth, 1904, Plaintiff in Error filed a demurrer to the alternative writ upon six several grounds.

See page 14 of the record.

Argument upon the demurrer coming on to be heard, and on the twenty-eighth day of June, 1904 the Su-

preme Court of the State of Florida filed its opinion, overruling the demurrer.

See pages 16 to 25, inclusive, of record.

An order was made upon the overruling of the demurrer requiring the Plaintiff in Error to file its return showing obedience to the mandate or why it was not obeyed, by Tuesday, July twelfth, following, which time was, by order of the Court duly made, extended to the first Monday in August, 1904.

On July eighteenth, 1904, Plaintiff in Error filed its return, setting up five distinct and several grounds as to why said order had not been obeyed.

The first four grounds were based upon the opinion of the Court rendered upon the demurrer of Plaintiff in Error to the alternative writ of mandamus. The fifth return was to the effect that the enforcement of the writ of the Railroad Commission would result in depriving the Plaintiff in Error of its property without due process of law.

On July twenty-sixth, 1904, the Defendant in Error filed its motion to quash the five returns of the Plaintiff in Error.

By leave of the Court, on July twenty-ninth, 1904, the Plaintiff in Error amended its fifth return so as to make it read as follows:

"That the passenger and freight tariffs prescribed by the Railroad Commissioners of the State of Florida to be observed by the defendant in the carriage of freight and passengers in the State of Florida, including the schedule of tariff of rates sought to be enforced in this proceeding, are unreasonable and do not give to the defendant fair and reasonable compensation for the services required to be performed by it in the carriage of such freight and passengers; and that the enforcement of such tariff and rates of said Florida Railroad Commis-

sion will result in depriving respondent of its property without due process of law and of the equal protection of the laws contrary to the guarantees of the Constitution of the United States and the amendments thereof."

On July twenty-ninth, 1904, the Defendant in Error again filed its motion to quash all of the returns, including the amended fifth return, of the Plaintiff in Error.

On July thirtieth, 1904, the Supreme Court of Florida made an order that the motion of the Defendant in Error, as to the first four returns, be granted, and as to the amended fifth return, denied.

Thereupon, a joinder of issue was had upon the amended fifth return and the time named for taking the testimony before the full Bench of the Supreme Court of Florida, in open Court.

Upon the hearing had upon the testimony submitted, the Court held that the rate in question was not unreasonable and that said rate taken in connection with the other rates prescribed by the Railroad Commission did not deprive the Plaintiff in Error of its property without due process of law nor deprive it of the equal protection of the law, within the inhibition of the Federal Statute.

ASSIGNMENTS OF ERROR.

The fourth, fifth, sixth and seventh assignments of error cover the Federal question involved in this case, and are as follows:

Fourth. The court erred in its final judgmenut awarding the peremptory writ of mandamus and in adjudging that the rate prescribed by the order of the railroad commissioners of the State of Florida of the 17th day of December, 1903, was not unreasonable.

Fifth. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the order of the Railroad Commission of the State of Florida of December 17th, 1903, taken in connection with the other rates prescribed by said Railroad Commission, does not deprive the respondent of its property without due process of law within the inhibition of the Federal Constitution.

Sixth. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the order of the railroad commission of the State of Florida of December 17th, 1903, taken in connection with the other rates prescribed by said Railroad Commission, does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibiton of the Federal Constitution.

Seventh. The court erred in its final judgment awarding the peremptory writ of mandamus and adjudging that the rate prescribed by the said order of the Railroad Commission of the State of Florida of December 17th, 1903, was not unreasonable, and that said rate taken in connection with the other rates prescribed by said Railroad Commission does not deprive the respondent of its property without due process of law nor of the equal protection of the law within the inhibition of the Federal Constitution.

ARGUMENT.

The testimony shows that the cost of material used in the railroads, and salaries of employes, have materially increased, and that the expense of handling local or State trafic is greater than in handling inter-state or through traffic, by at least twenty or twenty-five per

centum for the reason that in handling inter-state business the freights are carried through without additional expense incurred in handling intra-business in the way, of handling, delivery and shifting, side-tracks, warehouses, and men to handle the same.

Referring to the particular commodity involved, Mr. W. B. Denham, who was, at the time of testifying, General Superintendent of the Division, testified as follows:

"With reference to comparing phosphate freight with other heavy freights phosphate is the most expensive freight we handle. In the first place, it is a very hard material on the cars. We are compelled to handle it in cars so as to exclude moisture, and therefore must use box cars. It is not an infrequent occurrence for us to have cars burned every month by the miners loading hot rock into them. In the handling of the trafic, in order to save the miners demurrage on their stuff, they give us notice they will have boats in a port at a certain time, probably 15 or 20 days before the boat is due. We naturally put off delivery of the cars, under this notice, just as long as it is possible in order to get the phosphate to the port in time to load the boat. It frequently happens that there are three or four ships due about the same time. Of course the road cannot afford to run its cars to the mines 15 or 20 days ahead and hold them until the ships arrive. We wait until the last minute and, of course, that means extra service. The empties are run in, and about the time they are gotten there the miner has some of those cars ready to go back. The engine and crew that take a train down have to go back with it, to even up the power. Whenever we return a train south we must have one going north, so as to have engines at both ends of the line. Just about the time we have 200 or 300 cars to move probably the last train load will commence getting some of

the loads going back on the ship, and we have to run light engines to take the loads back. Of course we try to give an engine going south a load. With three ships due at the same time, if you get the phosphate aboard you have about 600 cars tied up, and if the ships do not arrive on time the cars are tied up until they do arrive. From my actual experience we have held cars 15 or 20 days, and sometimes 30 days, for a ship and for which the phosphate miner paid no demurrage. Not only that, but it necessitates having switching engines at the mines. The phosphate may be loaded from three or four mines, and we have to have a crew and engine to give the mines regular shifts. Sometime we can load only five or six cars at a shift, and this requires the engine to go at certain hours, put in its empties and bring this out to the main line before being attached to a through crew. There are expenses attached to the port. It is necessary to keep an engine at the port to shift the cars from the ship; as the stuff is taken out the empties must be pulled out and loads put in.

COST OF REPRODUCTION.

The testimony as to the cost of re-production, was as follows:

"I have been engaged with railroad construction and am familiar with the mileage of the Atlantic Coast Line Railroad Company in Florida. I have been over and exemained every mile of it. Taking that mileage as an entirety, in my judgment, if the money were economically, honestly and wisely expended, to-day, taking the terminals and everything into consideration, I suppose it could be replaced at a cost of $20,000 per mile. Relative values are higher to-day than formerly;

the cost of material is higher; and the property over which these railroads are laid has increased in value; that is, if you had to reproduce them and recondemn to-day.

"I understand from my experience and actual operation that the cost of operating a railroad for intrastate trafic, as separate and apart from inter-state trafic, would be 25 per cent. additional; that is, if it cost 60 per cent. to operate all of the lines there should be added 25 for the cost of operation of its local or intra-state traffic, if it was all local traffic."

CASH VALUE.

As to cash value, the testimony was as follows:

"Referring to the cash value of the property, I think we might be able to sell it for $10,000 per mile. It would not bring over 2 or 3 per cent. interest on $10,000 per mile at its present earnings. There are about 1265 miles in Florida. There is a total mileage in Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida of about 4,000 miles."

FREIGHT RECEIPTS FOR BUSINESS WHOLLY IN FLORIDA.

"My name is R. S. McIver. I am 42 years old. I am auditor of the freight receipts of the Atlantic Coast Line Railroad Company, and have been since July 1, 1902. Prior to that time I was connected with the roads

of the Plant system, which now compose the Atlantic Coast Line by consolidation, and was then auditor of both freight and passenger receipts. I have occupied that position since 1885. I handle freight earnings and have made a compilation of the freight earnings for the year ending June 30, 1904, I mean for Florida intra-state business. The data and figures were taken from the original reports of the agents. The agents send their reports in monthly and I bind them every month as soon as I finish their examination. The figures that I now have are taken from the reports of twelve months. The freight earnings of the Atlantic Coast Line Railroad Company for Florida's intra-state business for the year ending June 30, 1904, were $871,926.41."

PASSENGER RECEIPTS FOR BUSINESS WHOLLY IN FLORIDA.

"My name is George B. LeGrand. I am 42 years old. I am auditor of passenger receipts for the Atlantic Coast Line Railroad Company, and have been since July first, 1902. I have been connected with the Atlantic Coast Line Railroad Company since 1882, holding various positions in the clerical department—in the accounting department. I have made a compilation of the passenger earnings of the Florida business of the Atlantic Coast Line for the year ending June 30, 1904. I have made same from our agents' reports and conductors' reports of which I have charge. I have filed them each month, some are bound and others are not. They are all filed together, however. The passenger earnings on intra-state business for the ear ending June 30, 1904 were $678,326.80, which, added to the freight earnings, $871,926.41, on intra-state business, make a total of $1,550,253.21.

RECAPITULATION.

SHOWING RECEIPTS FROM ALL SOURCES, OF INTRA-STATE BUSINESS.

The total intra-state freight and passenger earnings for Florida for the year ending June 30, 1904, were $1,550,253.21. The total mileage in Florida is 1263.74 miles. Taking the cost of operaton at 56.7 per cent., it would amount to $ x; add to this the taxes paid $162,928.23 and we will have a total of $ x;—leaving the net earnings $508,331.41, which, at a valuation of $8,000 per mile, would equal 5.3 per cent; at a valuation of $10,000 per mile 4 2-100 per cent. Taking the cost of operation as 66.7 per cent., it would amount to $1,034,018.89; add to this the taxes paid, $162,928.23, we would have a total of $1,196.12,—leaving the net earnings $335,306.09 on a mileage of 1263.74, which, at a valuation of $8,000 per mile, would equal 3.49 per cent; at a valuation of $9,000. 3. 11per cent; and at a valuation of $10,000 per mile 2.79 per cent., as the net profits received from the intra-state business done in Florida.

The entire earnings of the Atlantic Coast Line Railroad Company on all traffic of all classes in Florida, both intra-state and inter-state, for year ending June 30, 1004, were as follows:

Freight earnings	$2,480,289.60
Passenger earnings	1,048,113.63
Mail	144,160.27
Express	115,633.46
Extra baggage and storage	12,142.69
Tracks, yards and terminals	50,329.20
Other sources	52,243.85
Making a total of	$3,903,012.70

FEDERAL QUESTION INVOLVED.

The Federal question involved may be presented in two several ways, and is properly divided:

First. Whether the Plaintiff in Error is earning its operating expenses, taxes, and a reasonable return on the money invested.

Second. Whether a reasonable rate is not understood to be a rate reasonable as an entirety? In other words, if a rate is reasonable for a long haul and unreasonable for a short haul, is not the rate as an entirety an unreasonable rate?

QUESTION OF LAW UPON WHICH CASE OF PLAINTIFF IN ERROR IS BASED.

The question involved is, whether Plaintiff in Error in the operation of that portion of its line situated entirely in Florida has a right to earn sufficient revenue from the State passenger and freight business done upon said division, to pay operating expenses, taxes, and a reasonable return upon its investment?

THE FLORIDA RAILROAD COMMISSION, IN FIXING FUTURE RATES, DOES NOT ACT AS A COURT.

The power to fix future rates is legislative and not juduicial.

167 U. S., page 499 I. C. C. vs. C. N. O. & T. P. R'y.

The Florida Railroad Commission, in fixing future rates, acts in a legislative capacity. Whatever judicial power it may have in regard to other matters, it does not act judicially when it assumes to fix rates.

98 Fed. Reporter, 341—2, W. U. T. Company vs. Myatt.

Even if the Legislature of Florida had denominated the Commission a court, it would not be conclusive as to the nature of the jurisdiction and powers conferred upon it. That question is not to be determined by any terminology employed in the Act.

98 Fed. Rep., pages 346, 349, W. U. T. Company vs. Myatt.

It may be premised, however, here, that Mr. Justice Brewer said in the Dey case: "Compensation implies three things—payment of the cost of service, interest on bonds, and then some dividend;" 'adequate dividend', subsequent cases say. These, then are the factors of compensation to be applied.

78 Fed. Rep., page 262, Southern Pac. Co. vs. Board of Railroad Commissioners.

In the case of Milwaukee Electric Railway and Light Company vs.. Milwaukee it was held that an ordinance was void under the 14th amendment, as depriving the company of its property without due process of law which required a street railroad compnay to reduce its rates, "when the road was only making yearly net earnings of 3.3 per cent., to 4.5 per cent. on its bona fide investment, and payng 5 per cent. interest on its bonds, in a city where the current rate of interest on first mortgage real estate security is 6 per cent.

87 Fed. Rep. page 577.

RATE OF INTEREST IN FLORIDA.

In arriving at what is a reasonable earning upon money invested, the statute of a State, as to interest charges allowed in the absence of a contract, is germane.

The Revised Statutes of Florida, 1892, Section 2320, provide that, "in all cases where interest shall accrue without a special contract for the rate thereof the rate shall be eight per cent. per annum, but parties may contract for a less or greater rate by contract in writing."

The method employed by the Plaintiff in Error to demonstrate that its earnings from State passenger and freight business in Florida do not exceed its operating expenses, taxes and a fair return upon the value of its lines wholly within Florida, derived from State passenger and freight business, is taken from the opinions of the Supreme Court of the United States in the cases of Smyth vs. Ames.

169 U. S., page 466., and
C. M. & St. P. R'y vs. Tompkns, 176 U. S., page 177.

"A State law, or regulations made thereunder, es-
"tablishing rates for transportation by railroad that will
"deprive the carrier of just compensation, is repug-
"nant to the 14th Constitutional Amendment, as depriv-
"ing the carrier of his property without due process of
"law, and denying to it the equal protection of the laws.

"While the State may fix rates of transportation,
"the question whether the rates are so unreasonably
"low as to deprive the carrier of its property without
"such compensation cannot be determined by state stat-
"ute or regulations thereunder so conclusively that the
"matter may not become the subject of judicial inquiry.

"The reasonableness or unreasonableness of rates "precribed by a State for the tranportation of persons "and property wholly within its limits must be deter- "mined without reference to he inter-state business done "by the carrier, or to the profits derived from it.

"Railroad rates should be fixed with reference to "the fair value of the property used and services ren- "dered, and not merely to pay expenses, interest and "dividends, nor in order to realize profits upon an exces- "sive valuation or a fictitious capitalization."

Smyth vs. Ames, 169 U. S., page 466.

The testimony of one of the witnesses in the case of Smyth vs. Ames was to the effect that it cost from 10 per cent. to 20 per cent. more for local than for through freight, and another, that the cost of a short haul was reasonably double a long haul, and the court in considering that case allowed 10 per cent. additional to be added to the through freight in reaching the cost of the local freight.

In the case at bar, the testimony of Mr. Denham, General Superintendent, showed that it would cost 25 per cent. more in Florida for inter-state trafic than it would for intra-state traffic.

The cases above cited, which hold that a railroad company is entitled to earn a sufficient amount to pay operating expenses, taxes, interest upon mortgage bonds, and some dividends to the stockholders, would, *a fortiori*, hold that a railroad company which owned no mortgage bonds, would be entitled to earn operating expenses and taxes, and, in addition, dividends for its stockholders equal to what the interest upon the mortgage bonds would have been, if such bonds were outstanding.

And so, the cases which hold, that the stockholders are entitled to dividends equal to, or approximating the legal rate of interest, would, *a fortiori*, hold that the stockholders were entitled to dividends equal to 4 per

cent. upon the present actual value of a road, located in a State where the legal rate of interest, as in Florida, is 8 per cent.

The testimony of Mr. Denham, General Superintendent, who surveyed and built the most of the division in Florida of the Plaintiff in Error, shows that it would cost $20,000 per mile to replace the property, wisely, honestly and economically expended; that on the market it could probably be sold for $10,000 per mile, cash. This, however, is not a criterion of its value upon the basis of which it should be allowed earnings; but, rather, the cost of reproduction of the property should be the test.

TABULATION.

As shown by the record, the order of the Commissioners provides that the rate to be charged by all railroads and common carriers doing busuiness wholly or in part within the State of Florida, for the transportation of phosphate from points in the State to points within the State, shall not exceed one cent per ton per mile. This rate is prohibited, however, by order whenever its use would raise the rate now charged, and furuther when the commodity in reaching destination will pass over two or more lines, the initial road is allowed to charge one and one-half cents per mile for the first ten miles of the haul.

For the convenience of the court we make the following tabulation from the testimony:

ACCOUNTING DEPARTMENT.

Statement showing intra-state earnings, cost of operation, taxes and net earnings of that part of the Atlantic Coast Line Railroad lying wholly within the State of Florida, for the 12 months ending June 30th, 1904.

Freight earnings	$871,926.41
Passenger earnings	678,326.80
Total	$1850,253.21
Cost of operation 66.7 per cent,	$1,034,018.89
Taxes	162,928.23
	$1,196,947.12
Net earnings	$353,306.09

Total mileage of road in Florida, 1,263.74 miles.

$353,306.09 equals 3.49 per cent. on valuation of $8,000 per mile.

$353,306.09 equals 3.11 per cent. valuation of $9,000 per mile.

$353,306.09 equals 2.79 per cent. on valuation of $10,000 per mile.

ACCOUNTING DEPARTMENT.

Statement showing intra-state earnings, cost of operation taxes and net earnings of that part of the Atlantic Coast Line Railroad lying wholly within the State of Florida, for the 12 months ending June 30th, 1904.

Freight earnings	$871,926.41
Passenger earnings	678,326.80
Total	$1,550,253.21
Cost of operation 56.7 per cent.	$878,993.57
Taxes	162,928.23
	$1,041,921.80
Net earnings	508,331.41

Total mileage in Florida, 1,263.74 miles.

$508,331.41 equals 4.47 per cent. on valuation of $8,000 per mile.

$508,331.41 equauls 4.47 per cent. on valuation of $9,000 per mile.

$508,331.41 equals 4.02 per cent. on valuation of $10,000 per mile.

Florida earnings and expenses for the year ending June 30th, 1904, as reported to the railroad commission.

EARNINGS:

Freight	$2,480,289.60
Passenger	1,048,113.63
Mail	144,160.27
Express	115,633.46
Extra baggage and storage	12,142.69
Tracks, yards and terminals	30,329.20
Other sources	52,434.85
	$3,903,012.70

It will be observed that with the cost of operaton at 66.7 per cent., which includes 10 per cent. additional for the cost of intra-state trafic more than inter-state traffic, the earnings would be less than 3 per cent. If on the other hand, we take the operation at 56.7 per cent. the earnings would be only 4.2 per cent. on a valuation of $10,000 per mile. These figures are conservarive in the extreme, in view of the testimony as to value, and we submit that with interest ruling, as a statutory rgulation, at 8 per cent., no reduction should be made in the rate that in any way militates against earning this amount of money.

WHAT IS PROPERTY?

What is property and what amounts to a deprivation of it is discussed at length by Judge Hare in his work on American Constitutional Law, at page 357 of which work he says:

"The term property may be used to signify the "thing owned or possessed, or the right and privileges "which together make up the aggregate of use or enjoy- "ment implied in ownership. Property may therefore "be justly defined as 'the dominion of indefinite right of "user or disposition which one may exercise over par- "ticular things or subjects.' This is its appropriate "meaning, and that which it has in the Constitution; "although it is not infrequently used to indicate the thing "rather than the right, and much of the uncertainty and "confusion observable in the decisions have arisen from "overlooking this distinction.

"Such, manifestly, is the true interpretation of the "Federal Constitution, because the same amendment "which guarantees the right to compensation where "property is taken for public purposes provides that "no person shall be deprived of life, liberty or property "without due process of law."

On page 383 of the same work, he says:

"For as property is a right to the entire or partial "use, occupation, or enjoyment of some specific thing, it "may be taken either by abrogating the right, or so "dealing with the thing that the right cannot be bene- "ficially executed or enjoyed."

IS THE RATE REASONABLE AS AN ENTIRETY?

That the rate is not reasonable as an entirety we think is shown by the testimony of General Superintendent Denham. If the Plaintiff in Error were required to place 50 cars for phosphate, or a less number, for a haul of only 40 miles, the compensation to be paid to it under the rate made by the Commission would not pay for the cost of placing the cars, though if the haul were 400 miles it might afford compensation. That the rate is unreasonable for a short haul the commission in its report for 1904 (see pages 70, 71, 72 and 73 of the record) practically admits. A rate to be reasonable, we insist, must be reasonable as a whole. You cannot segregate and say that a rate is reasonable for 100 miles if it is not reasonable for 20 miles. Unless it is reasonable for the entire mileage it is not a reasonable rate, and the report of the Commission admits that for a haul of 10 or 20 miles the rate is unreasonable. This being true, the whole rate should be held unreasonable.

The short haul should be reasonably double the long haul.

Smyth vs. Ames, 169 U. S., text, 529.

The reasonableness of a rate must be determined solely upon the intrastate business.

Smyth vs. Ames, 169 U. S., 467.

Counsel for Defendant in Error contend that the method of arriving at the actual operating expenses for Florida is an erroneous method and misleading and does not give to Florida the proper portion of earnings, and charges the system in Florida with a greater burden for expense of operation than should be the case.

This contention is very well answered by Mr. R. S. McIver (page 59 of the record), as follows:

If the Florida lines were a separate company the receipts from freights would be very much less than they now are under the system of allotment under which the figurues submitted have been made. The earnings in Georgia are considerably heavier than in Florida, and that is the way with other lines. The total freight receipts from phosphate hauled in Florida for the year ending June 30, 1904, were about $430,000.

It will be seen, therefore, that instead of the method of apportioning the tons of freight handled and all expenses in regard thereto being to the disadvantage of Florida, it is to its advantage, and that, as a matter of fact, under the testimony just quoted, the expense of operation would be even greater than that contended for by Plaintiff in Error.

We submit that under a careful reading of the record in this case and the rpinciples of law applicable thereto, the contentions of Plaintiff in Error are well taken and should be sustained.

JOHN E. HARTRIDGE,
Attorney for Plaintiff in Error.

John E. Hartridge

No. 152.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1905.

Office Supreme Court U. S.
FILED
JAN 15 1906
JAMES H. McKENNEY,
Clerk.

NO. [redacted]9

ATLANTIC COAST LINE R. R. CO.

PLAINTIFF IN ERROR.

vs.

THE STATE OF FLORIDA ETC.

DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

W. H. ELLIS, Attorney General
J. M. BARRS, Special Counsel.

THE FLORIDIAN

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1905.

The Atlantic Coast Line Railroad Company, Plaintiff in Error, vs. The State of Florida upon the relation of W. H. Ellis, As Attorney General of Said, State, and J. M. Barrs, as Special Counsel for Jefferson B. Browne et al., Railroad Commissioners of said State. Defendant in Error.	No. 152. Error to the Supreme Court of Florida.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This case is before this Court on a writ of error to the Supreme Court of the State of Florida, in which an action of mandamus was instituted to enforce rates on phosphate from points in the State of Florida to points within the said State over all the lines of railway of the plaintiff in error wholly or in part within the State of Florida.

The Railroad Commissioners, in prescribing the rates as set up in Exhibits A. and B. (pp. 11 to 13, inclusive, of record), acted in pursuance of Chapter 4700, Laws of Florida, p. 76 Acts of 1899.

The record shows all the proceedings in said suit, but the opinion on the merits of the case will be found on pp. 35 to 37, inclusive, of the record, which is based on the evidence taken before the Supreme Court of Florida, on p. 47 et seq. of the record.

The authority of the Railroad Commissioners, under the Constitution and Laws of Florida, to make and enforce rates for the transportation of freight and passengers from points in Florida to points in Florida, limited only by the provisions of the Federal Constitution against the taking of property without due process of law; the right of the State to enforce the orders of the State Railroad Commission by mandamus instituted originally in the Supreme Court of the State; the regularity of the proceeding before the Railroad Commission preliminary to the making of its orders; and the prima facie correctness, justice and validity of the orders of the Commission, and the duty of the courts to enforce the orders of the Commission, in the absence of an affirmative showing before the Court made by the defendant in a mandamus proceeding sufficient to overcome the prima facie validity of the orders of the Commission, —are, we understand, not questioned by the plaintiff in error, and are entirely manifest by reference to the Constitution and Laws of Florida, and cannot be reviewed by this Court.

ARGUMENT.

FIRST.

The first assignment of error is based on the overruling of the demurrer of the plaintiff in error to the alternative writ of mandamus. The opinion of the Supreme Court of Florida and the statement of the cause will be found on pp. 15 to 25, inclusive, of the record.

It is not deemed necessary to argue this point. This is a question of State practice which is concluded so far as this hearing is concerned.

Tripp v. Santa Rosa St. R. Co., 144 U. S. 126.
Iowa Cent. R. Co. v. Iowa, 160 U. S. 389;
Grand Rapids etc. R. Co. v. Butler, 159 U. S. 87;
Wood v. Brady, 150 U. S. 18;
Gibson v. Mississippi, 162 U. S. 565;
French v. Hopkins, 124 U. S. 524;
Loeber v. Schroeder, 149 U. S. 580;
Thorington v. Montgomery, 147 U. S. 490;
McNulty v. California, 149 U. S. 645;
Northern Pacific R. Co. v. Patterson, 154 U. S. 130;
O'Neill v. Vermont, 144 U. S. 323;
Hibbin v. Smith, 191 U. S. 310;
Smith v. Indiana, 191 U. S. 138.

SECOND.

This court is precluded from reviewing the judgment of the Supreme Court of Florida on the second assignment of error. See cases cited above.

THIRD.

The third, fourth, fifth, sixth and seventh assignments of errors are in effect the same, and all are based on the final decision of the Supreme Court of Florida, which is contained in the record on pp. 35 to 37, inclusive. The eighth is a blanket assignment which covers all the others. No Federal question of law is raised by any of these assignments. The Supreme Court of Florida found the facts as stated in its opinion and that finding is conclusive in this court.

Hall v. Jordan, 15 Wall. 393;
Carpenter v. Williams, 9 Wall. 785;
Republican River Bridge Co. v. Kansas Pac. R. Co., 92 U. S. 315;
Martin v. Marks, 97 U. S. 345;
Kenney v. Effinger, 115 U. S. 577;
Quimby v. Boyd, 128 U. S. 488;
Dower v. Richards, 151 U. S. 658;
Hedrick v. Atchison, etc. R. Co., 167 U. S. 673;
Atchison, etc. R. Co. v. Matthews, 174 U. S. 96
Backus v. Fort St. Union Depot Co., 169 U. S. 557;
Egan v. Hart, 165 U. S. 188;
In re Buchanan, 158 U. S. 31;
Chicago, etc. R. Co. v. Chicago, 166 U. S. 226;
Missouri, etc. R. Co. v. Haber, 169 U. S. 513.

The Supreme Court of Florida, in their original jurisdiction of mandamus cases, are the judges of the fact as well as of the law.

The State ex rel County Commissioners of Columbia County v. County Commissioners of Suwannee County, 21 Fla. 1.

The Supreme Court of Florida in their opinion in this case, did not enunciate any questionable principles of law. The opinion is limited almost, if not quite, to their findings of facts based on the testimony of the plaintiff in error before them.

See pp. 35-37 of the record.

According to the decisions by this court, the plaintiff in error has not shown sufficient facts to reverse the judgment of the Supreme Court of Florida, if the court should decide, contrary to our contention, and that the points raised in the case are questions of mixed law and fact and properly reviewable by this court.

Chicago M. & St. R. Co. v. Minn., 134 U. S. 418;

Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339;

Reagan v. Farmers Loan & T. Co., 154 U. S. 362;

St. Louis & S. F. R. Co. v. Gill, 156 U. S. 649;

Covington & L. Tr. Co. v. Sanford, 164 U. S. 578;

Smyth v. Ames, 169 U. S. 466;

San Diego L. & T. Co. v. Jasper, 189 U. S. 439.

If this court could go back of the findings of fact we could rely upon the opinion of the Supreme Court of Florida, pages 35, 37 of the records for sufficient comment upon the evidence submitted by the Atlantic Coast Line Railroad Company. We, however, would call the attention of the court to the fact that what evidence was submitted by that company was shown to be utterly worthless when on cross-examination the witnesses admitted that their books from which they testified do not show the actual receipts from intrastate freight business in Florida, but that the books from which they testified showed as receipts from Florida intra-state business only the result of multiplying the actual number of tons of such freight hauled one mile in Florida by the *average* ton-mile freight rate on the whole Atlantic Coast Line System.

See testimony of R. S. McIver, Auditor of Freight Receipts for the Atlantic Coast Line Railroad Company, record pages 56 and 57, in which he, on cross-examination, says:

"The amount of freight receipts allotted to Florida does not represent the actual receipts for hauling freight in Florida, but is arrived at by taking the total number of tons of freight hauled one mile on the entire A. C. L. system in Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama, and the entire freight receipts of the entire system for the year, and thereby ascertaining the average rate per ton for hauling one mile all freight hauled on the system. We then take the actual number of tons of freight handled one mile in Florida and multiply that by the average rate received by the system and allot the amount so arrived at to the Florida lines as their earnings. This is the basis on which all of our statements are made."

Inasmuch as the average rate of freight per ton per mile in Florida is several times greater that the average rate on the entire system the injustice done to Florida is manifest, and this is also shown in the evidence by their witness on cross-examination when they admit (see testimony of W. B. Denham Record P. 53) that the business done by the Atlantic Coast Line in Florida for the year ending June 30th, 1903 was considerably better than the business done by the Plant System over the same lines the year before, and yet because of this system of book-keeping, showed the gross earnings of the Atlantic Coast Line for 1903 more than $818,000. less than reported by the Plant System for 1902.

It was also attempted to charge the operating expenses as a cost of hauling freight one year the purchase of engines, the cost of taking up light rails and replacing with heavy rails and other betterment or construcion charges.

The evidence also fails absolutely to show that the enforcement of the order of the Commission will reduce the revenues or add to the expenses of the company one single cent. Indeed it is affirmatively stated by witnesses for the Atlantic Coast Line that there are now no intra-state shipments to be affected, consequently there can be no damage arising from the putting into effect of the proposed rate.

It is therefore respectfully submitted that the decision of the Supreme Court of Florida should be affirmed.

W. H. ELLIS Atty Genl.
J. M. BARRS, Special Counsel for defendant in error.